MISSISSIPPI CODE 1972

Annotated

Taxation and Finance

(§ 27-1-1 to
§ 27-17-521)

Title 27

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME EIGHT

TAXATION AND FINANCE

§§ 27-1-1 to 27-17-521

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2017 REGULAR AND 1ST EXTRAORDINARY
LEGISLATIVE SESSIONS

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This 2017 Replacement Volume 8 of the Mississippi Code of 1972 Annotated represents material in Chapters 1 through 17 appearing in the original 1973 bound volume, the 1999, 2003 and 2006 Replacement Volume 7, and the 2010 and 2013 Replacement Volume 8, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2017 Regular and 1st Extraordinary Sessions.

This volume contains the text of Title 27, Chapters 1 through 17. The remaining Title 27 chapters appear in the following volumes: Chapter 19, Replacement Volume 8A; Chapters 21 through 53, Replacement Volume 8B; and Chapters 55 through 113, Replacement Volume 8C.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water Street, Charlottesville, VA 22902-5389.

September 2017 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading “Judicial Decisions.” Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called “catchlines.” The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with “In general” first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading “Decisions under former law.”

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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§ 27-1-1. Bond; oath.

The assessor of each county, except in those counties wherein the office of assessor and the office of tax collector are combined as provided in Section 27-1-7, shall take and file the oath of office required by the Constitution and give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to Fifty Thousand Dollars ($50,000.00).

SOURCES: Codes, 1880, § 348; 1892, § 114; 1906, § 115; Hemingway's 1917, § 3459; 1930, § 100; 1942, § 9088; Laws, 1890, p. 36; Laws, 1986, ch. 458, § 32; Laws, 1992, ch. 400, § 1, eff from and after July 1, 1992.

Cross References — Provision that assessors shall be elected in 1995 and every four years thereafter, see § 23-15-193.

Nominations for state, district, county, and county district offices which are elective, see § 23-15-291 et seq.

Taking oath of office, generally, see § 25-1-9.

Assessment of ad valorem taxes, generally, see § 27-35-1 et seq.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 619 et seq.

16B Am. Jur. Legal Forms 2d, State and Local Taxation § 238:9 (bond of official taxation).

CJS. 84 C.J.S., Taxation § 558 et seq.

§ 27-1-3. Assessor may appoint deputies; oath of office; bond; appointment process.

The assessor may, with the approval of the board of supervisors of the county, appoint deputies, who shall take the oath of office, and shall be required by the assessor to give bond to him in an amount not less than Ten Thousand Dollars ($10,000.00) for the faithful discharge of their duties. The appointment shall be in writing, filed with the clerk of the board of supervisors, whose approval shall be entered on the minutes of such board.

SOURCES: Codes, 1857, ch. 3, art 4; 1880 § 349; 1892, § 115; 1906, § 116; Hemingway's 1917, § 3460; 1930, § 101; 1942, § 9089; Laws, 2009, ch. 467, § 12; Laws, 2009, 2nd Ex Sess, ch. 91, § 1, eff from and after July 1, 2009.

JUDICIAL DECISIONS

1. In general.

Compensation of deputy tax assessor which is paid by tax assessor himself was exempt from garnishment. Pickle v. McLaughlin, 162 Miss. 693, 139 So. 157 (1932).

ATTORNEY GENERAL OPINIONS

A county board of supervisors has no authority to appoint deputy tax assessors. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

Tax assessors/collectors may, in their discretion, maintain a separate independent system of personnel administration for their respective employees. However, such policies of a board of supervisors or of a tax assessor would not be binding on a successor board or assessor. Mathis, Dec. 1, 2003, A.G. Op. 03-0648.

§ 27-1-5. Duties and compensation.

The assessor shall perform all of the duties required of him by this chapter, and such other duties as may be required by law, and he shall be compensated as provided in Chapter 3 of Title 25 of the Mississippi Code of 1972.

SOURCES: Codes, 1892, § 116; 1906, § 117; Hemingway's 1917, § 3461; 1930, § 102; 1942, § 9090.

Cross References — Suspension of defaulting tax collector, see § 7-1-57.

Compensation of assessors, see §§ 25-3-3, 25-3-7.

Advice and instructions by state tax commission, see § 27-3-31.

Prosecutions and actions by Commissioner of Revenue for defaults and violations under tax laws, see § 27-3-33.

Increased compensation for tax assessors upon completion of Mississippi Education and Certification Program for appraisals, see § 27-3-52.

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Liability of tax assessors and collectors, see § 27-29-29.

Duties with respect to homestead exemptions, see § 27-33-33.

Providing tax list forms to tax assessors, see § 27-35-17.

Providing assessment roll forms to tax assessors, see § 27-35-25.

County tax collector's duty to collect tax on sale or use of motor vehicles, see § 27-65-201.

Criminal offense for officer's failure to perform duty, see § 97-11-37.

JUDICIAL DECISIONS

1. In general.

An assessment of vendor's lien notes and the real estate for which the notes were given is not double taxation. Adams v. Kuykendall, 83 Miss. 571, 35 So. 830 (1904).

If the taxpayer renders to the assessor a list of lands so defectively described as not to identify it, the assessor does not violate his duty by assessing the land under an accurate description, although it be assessed to an unknown owner. Crawford v.

McLauren, 83 Miss. 265, 35 So. 209 (1903), error overruled, 83 Miss. 278, 35 So. 949 (1904).

Under a statute (L 1894, c. 33) providing that the board of supervisors "may" allow an assessor not exceeding ten cents for each individual assessed on the personal roll, it is within the discretion of the board whether any amount, and, if any, what amount, should be allowed. Williams v. Board of Supvrs., 74 Miss. 122, 20 So. 860 (1896).

ATTORNEY GENERAL OPINIONS

A county board of supervisors does not have the authority to contract away the duties of the tax assessor; however, it is within the authority of the board of supervisors to survey, map, and appraise the property in the county. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 620.

CJS. 84 C.J.S., Taxation §§ 562, 579, 590, 591.

§ 27-1-7. Assessor to be tax collector; bond; duties; effect of failure to qualify as tax collector.

The assessor of each county, except as otherwise provided in this chapter, shall be the tax collector therein; and he shall give one (1) bond for the combined office of assessor and tax collector, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for such collector; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). He shall also take and file the oath of office as tax collector. Such assessors and tax collectors shall collect all taxes heretofore collected by the sheriffs in said counties, including, but not limited to, ad valorem and privilege taxes, charges and fees of every kind and nature heretofore comprising a portion of the tax collecting duties of the sheriffs of said counties and shall, by the twentieth day of the month following collection, pay same to the collecting political subdivision without retaining any portion thereof for his services. Provided, however, regardless of the political subdivision or fund for which the tax was collected, the assessor and tax collector shall pay at least the percentage of such tax heretofore retained by the sheriff as his fee directly into the general fund of the concerned county, and said payment shall be made by the twentieth day of the month following collection. In case of the failure of the assessor to qualify as tax collector within the same time allowed for taking the oath of office and giving bond as assessor, he shall thereby vacate the office of assessor and the vacancy, as assessor and tax collector, shall be filled according to law. Such assessors and tax collectors shall perform all of the tax collecting duties heretofore performed by the sheriffs thereof with the full and complete authority and liabilities heretofore possessed by or imposed upon said sheriffs. However, an assessor and tax collector shall not be liable for ad valorem taxes, privilege taxes, charges and fees collected by him, payment for which was made by a check, draft or other order for the payment of money which has been returned to the assessor and tax collector because of insufficient funds in the account on which such check, draft or order was drawn, if the assessor and tax collector has exhausted all reasonable means of collecting such instrument, including the filing of a civil suit or presentation to the district attorney for collection under Section 97-19-73 et seq.

SOURCES: Codes, 1942, § 9098-01; Laws, 1968, ch. 369, § 6; Laws, 1972, ch. 464, § 1; Laws, 1986, ch. 458, § 33; Laws, 1989, ch. 391, § 1; Laws, 1991, ch. 604, § 4; Laws, 1992, ch. 400, § 2, eff from and after July 1, 1992.

Cross References — County tax collector's duties with respect to licensing of flea market vendors, see § 27-17-162.

County tax collector's duty to collect tax on sale or use of motor vehicles, see § 27-65-201.

ATTORNEY GENERAL OPINIONS

Tax collector is required to accept payment of taxes tendered to him, regardless of whether tax collector/assessor challenges validity of change in assessment made by Board of Supervisors. Hosey, May 9, 1991, A.G. Op. #91-0369.

If a check is returned for insufficient funds subsequent to a tax sale, the tax collector should first give notice as required by statute to the drawer/owner and, if the owner does not satisfy the outstanding check, the tax collector should utilize one of the courses of action provided by law for collection on the check; if this action fails, the tax collector should sell the property for taxes at the next regular tax sale. LaRosa, Feb. 28, 2003, A.G. Op. #03-0666.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 619 et seq.

16B Am. Jur. Legal Forms 2d, State and Local Taxation § 238:9 (bond of tax official).

CJS. 85 C.J.S., Taxation § 1151 et seq.

§ 27-1-9. Office of assessor and tax collector; budget; finances.

The following shall be applicable to all counties and shall pertain to the operation of the assessor and tax collector's office:

(a) Each assessor and tax collector shall appoint a sufficient number of deputies to assist him in carrying out the duties of his office and fix their compensation, subject to the budget for the assessor and tax collector's office approved by the county board of supervisors. No deputy shall receive a salary which exceeds the salary of the assessor and tax collector. Each deputy assessor shall give bond for the faithful discharge of his duties as provided in Section 27-1-3. Each deputy tax collector shall give bond to be payable, conditioned and approved as provided by law in an amount not less than Fifty Thousand Dollars ($50,000.00) for the faithful discharge of his duties.

(b) The assessor and tax collector shall, at the July meeting of the board of supervisors, submit a budget of estimated expenses of his office for the ensuing fiscal year beginning October 1 in such form as shall be prescribed by the Director of the State Department of Audit. The board shall examine this proposed budget and determine the amount to be expended by the assessor and tax collector in the performance of his duties for the fiscal year and may increase or reduce said amount as it deems necessary and proper.

The budget shall include amounts for compensating deputies and other employees of the assessor and tax collector's office, for travel and transportation expenses of the assessor and tax collector and deputies, for theft insurance premiums, for equipment and supplies of his office, and for such other expenses as may be incurred in the performance of the duties of his office. In addition, the budget shall include amounts for the payment of premiums on bonds and other insurance for the assessor and tax collector and his deputies which, in the opinion of the board of supervisors, are deemed necessary to protect the interests of the county, or the assessor and tax collector and his deputies. Such amounts may include official bonds and any bonds required of his deputies by the assessor and tax collector; fire and other hazards insurance; and hospitalization insurance as provided for in Sections 25-15-101 and 25-15-103, Mississippi Code of 1972.

(c) The board of supervisors shall, at its first meeting of each quarter beginning on October 1, January 1, April 1, and July 1, appropriate a lump sum for the assessor and tax collector for the expenses of his office during the current quarter. The quarterly appropriation shall be one-fourth (¼) of the amount approved in the annual budget unless the assessor and tax collector requests a different amount. Except in case of emergency, as provided in the county budget law, the appropriation for the quarter beginning in October of the last year of the assessor and tax collector's term shall not exceed one-fourth (¼) of the annual budget.

(d) The assessor and tax collector shall file a report of all expenditures of his office during the preceding month with the board of supervisors for approval at its regular monthly meeting in a form to be prescribed by the Director of the State Department of Audit and upon filing thereof and approval by the board, the clerk of the board shall issue warrants in payment thereof but not to exceed the budget appropriation for that quarter. Any appropriated funds which are unexpended at the end of the fiscal year shall remain in the county general fund.

(e) The budget for the assessor and tax collector's office may be revised at any regular meeting by the board of supervisors; and upon recommendation of the assessor and tax collector, the board may at any regular meeting make supplemental appropriations to his office.

(f) The budget for the assessor and tax collector's office may include amounts to cover necessary expenses to provide equipment and personnel to file, store, retain or reproduce all records, filings or documents using microfilm, microfiche, data processing, computers, magnetic tape, optical discs or any other electronic process which correctly and legibly stores and reproduces or which forms a medium for storing, copying or reproducing documents, files and records.

SOURCES: Codes, 1942, § 9098-02; Laws, 1968, ch. 369, § 9; Laws, 1972, ch. 407, § 1; Laws, 1973, ch. 337, § 1; Laws, 1994, ch. 521, § 28; Laws, 2009, 2nd Ex Sess, ch. 91, § 2, eff from and after October 1, 2009.

Cross References — Method of operation where offices of assessor and collector are separate, see § 27-1-15.

ATTORNEY GENERAL OPINIONS

Tax assessor/collector in county not required to operate on countywide system of road administration, who by law is authorized to employ personnel, is not required to adopt countywide personnel administration system established by county board of supervisors. Guice, July 22, 1992, A.G. Op. #92-0518.

Tax collector should request all travel expenses desired by him in his budget subject to right of board of supervisors to approve amount; tax collector must submit itemized and documented claim for travel and expenses actually and necessarily incurred to board of supervisors for approval. Austin, Dec. 10, 1992, A.G. Op. #92-0842.

A county board of supervisors has no authority to appoint deputy tax assessors. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

Within reason, the county board of supervisors must provide the necessities for the tax assessor's office to do business, including postage, stationery, and all necessary articles. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

When the board of supervisors has established a budget for the tax assessor or tax collector, but has failed to establish quarterly allocations as required by law, those budgets are rendered annual lump sum budgets which have no allocation periods. Crook, Jan. 25, 2002, A.G. Op. #02-0041.

Board of supervisors' authority does not extend to establishing a quarterly budget allocation for the office of the chancery clerk. Crook, Nov. 1, 2002, A.G. Op. #02-0638.

County tax collector's employment of her husband as a part time mobile home inspector would violate the nepotism statute. Creekmore, July 25, 2003, A.G. Op. 03-0379.

Tax assessors/collectors may, in their discretion, maintain a separate independent system of personnel administration for their respective employees. However, such policies of a board of supervisors or of a tax assessor would not be binding on a successor board or assessor. Mathis, Dec. 1, 2003, A.G. Op. 03-0648.

A tax assessor/collector may, within the limits of his board approved budget, employ the number of employees that he deems necessary and fix the compensation for each employee. Johnson, Mar. 5, 2004, A.G. Op. 04-0070.

§ 27-1-11. Tax collector as separate officer in certain counties; reconsolidation of offices.

In counties with a total assessed valuation of Sixty-Five Million Dollars ($65,000,000.00) or above, the board of supervisors, in its discretion, may separate the office of tax collector from the office of assessor by resolution spread upon the minutes of the board, provided that such resolution shall come into effect with the succeeding term of office and shall not affect any duly elected official during the performance of his term.

Any such resolution to separate the offices shall be adopted on or before February 1, 1971, or on or before February 1 of any succeeding year in which general county and statewide elections are held.

After the offices have been separated, they shall remain separate until consolidated by like resolution of the board of supervisors for the succeeding term; provided, however, such resolution to consolidate the offices, having been once separated, shall become effective only after the affirmative vote of a majority of the qualified voters of the county participating in an election to be held in conformity, in all respects, with the applicable statutes governing special elections.

SOURCES: Codes, 1942, § 9098-03; Laws, 1968, ch. 369, § 10, eff from and after passage (approved August 8, 1968).

§ 27-1-13. Tax collector as separate officer; election; bond; powers and duties.

In any such county that has properly adopted a resolution to separate such offices, there shall be a separate tax collector therein who shall possess the same qualifications and be elected at the same time and in the same manner as provided by law for the assessor. He shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the state and county taxes shown by the assessment rolls and the levies to have been collectible in the county for the year immediately preceding the commencement of the term of office for said collector, and he shall also take and file the oath of office as tax collector; however, such bond shall not exceed the amount of One Hundred Thousand Dollars ($100,000.00). Such tax collector shall collect all taxes heretofore collected by sheriffs or assessors, as the case may be, in said counties, including but not limited to ad valorem and privilege taxes, charges and fees of every kind and nature heretofore comprising a portion of the tax collecting duties of the sheriffs or assessors of said counties and shall pay same monthly to the collecting political subdivision without retaining any portion thereof for his services. Provided, however, regardless of the political subdivision or fund for which the tax was collected, the tax collector shall pay at least the percentage of such tax heretofore retained by the sheriff as his fee directly into the general fund of the concerned county, and said payment shall be made by the twentieth day of the month following collection. Such tax collectors shall perform all of the tax collecting duties in such counties heretofore performed by the sheriffs or assessors thereof, as the case may be, with the full and complete authority and liabilities heretofore possessed by or imposed upon said sheriffs or assessors. However, a tax collector shall not be liable for ad valorem taxes, privilege taxes, charges and fees collected by him, payment for which was made by a check, draft or other order for the payment of money which has been returned to the tax collector because of insufficient funds in the account on which such check, draft or order was drawn, if the tax collector has exhausted all reasonable means of collecting such instrument, including the filing of a civil suit or presentation to the district attorney for collection under Section 97-19-73 et seq.

SOURCES: Codes, 1942, § 9098-04; Laws, 1968, ch. 369, § 11; Laws, 1972, ch. 464, § 2; Laws, 1986, ch. 458, § 34; Laws, 1989, ch. 391, § 2; Laws, 1991, ch. 604, § 5, eff from and after July 1, 1991.

Cross References — County tax collector's duty to collect tax on sale or use of motor vehicles, see § 27-65-201.

ATTORNEY GENERAL OPINIONS

The provisions of §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, only mandate the use of tax assessment rolls and the avails to be collected from levies thereon in calculating the amount of the bonds therein required. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all assessment rolls upon which a board of supervisors may levy ad valorem taxes. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all ad valorem tax levies listed on the certified levy sheet, including school district levies. Bryant, January 29, 1999, A.G. Op. #99-0011.

The calculation pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, includes all classes of property upon which ad valorem taxes are levied and collected. Bryant, January 29, 1999, A.G. Op. #99-0011.

In calculating the amount of a bond pursuant to §§ 9-5-131, 9-7-121, 19-3-5, 19-4-9, 21-1-7, 21-17-5(1), and 27-1-13, the total amount of ad valorem taxes to be collected, rather than the actual amount collected, must be used. Bryant, January 29, 1999, A.G. Op. #99-0011.

If a check is returned for insufficient funds subsequent to a tax sale, the tax collector should first give notice as required by statute to the drawer/owner and, if the owner does not satisfy the outstanding check, the tax collector should utilize one of the courses of action provided by law for collection on the check; if this action fails, the tax collector should sell the property for taxes at the next regular tax sale. LaRosa, Feb. 28, 2003, A.G. Op. #03-0666.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 769 et seq.

16B Am. Jur. Legal Forms 2d, State and Local Taxation § 238:9 (bond of tax official).

CJS. 85 C.J.S., Taxation § 1239 et seq.

§ 27-1-15. Method of operation where offices of assessor and tax collector are separated.

In the event the offices of assessor and tax collector shall have been separated in any such county, then each of the said officers shall operate his office according to the provisions of Section 27-1-9 of this chapter which prescribes the method of operation of the combined office of assessor and tax collector.

SOURCES: Codes, 1942, § 9098-05; Laws, 1968, ch. 369, § 13, eff from and after the first Monday in January, 1972.

§ 27-1-17. May demand list of employees.

The county tax assessor may require any person, firm or corporation having any person or persons in their employ, to deliver to him in his official capacity a list of all such persons or employees, showing the names, ages, sex, and residence, if such information is available in the records of the reporting person, firm or corporation.

SOURCES: Codes, 1930, § 106; 1942, § 9094.

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation §§ 541, 542, 544.

85 C.J.S., Taxation §§ 1834, 1903, 2189.

§ 27-1-19. To gather and record data; electronic filing and storage.

The county assessor shall from time to time by personal inspection and examination, by himself or deputies, gather and record, in writing, any and all available data and information bearing upon the location, number, amount, kind and value of any and all property and persons which he is required by law to assess; and he shall keep a list of all persons subject to assessment in his county and shall note thereon all removals from the county or from one precinct to another within the county, and shall add thereto the names of all persons subject to assessment moving into his county. The information required to be collected and preserved shall be filed and systematically indexed and remain a permanent part of the record of the assessor's office in such manner that the same may be available for the use of the board of supervisors and other officials of the county and state performing duties with reference to the assessment of property and the collection of taxes.

Such records may be generated, filed, stored, retained, copied or reproduced by microfilm, microfiche, data processing, computers, magnetic tape, optical discs or any other electronic process which correctly and legibly stores and reproduces or which forms a medium for storing, copying or reproducing documents, files and records in addition to, or in lieu of the paper documents, files and records.

SOURCES: Codes, 1930, § 107; 1942, § 9095; Laws, 1994, ch. 521, § 29, eff from and after passage (approved March 25, 1994).

Cross References — Advice of Commissioner of Revenue, see § 27-3-31.
Informational forms furnished by Department of Revenue, see, § 27-3-53.
Homestead exemption duties of tax assessor, see § 27-33-33.
Requirement of taxpayer to furnish list of taxable personal property, see § 27-35-23.
Taxpayer's valuation of his property, see § 27-35-29.
Taxation of corporations and joint stock companies, see § 27-35-31.

Assessment of lands, see § 27-35-49.

Assessor's report of cotton ginners to Department of Agriculture and Commerce, see § 69-1-13.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 627.

2 Am. Jur. Trials, Locating Public Records § 16.

CJS. 84 C.J.S., Taxation §§ 622, 623.

§ 27-1-21. Shall examine records.

The assessor shall have the right and power and it shall be his duty to inquire into the purchase price paid for any property, real or personal, and to ascertain and acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessment then being made; and the price paid for property at such sales or transfers shall be considered by the assessor in determining the value of property to be listed for assessment.

SOURCES: Codes, 1930, § 108; 1942, § 9096.

Cross References — Exercise of authority granted by this section by Commissioner of Revenue during annual visits to counties, see § 27-3-51.

ATTORNEY GENERAL OPINIONS

A county board of supervisors does not have the authority to contract away the duties of the tax assessor; however, it is within the authority of the board of supervisors to survey, map, and appraise the property in the county. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

§ 27-1-23. Authority to inspect property and demand data.

(1) The county and municipal tax assessor in person, or by deputy, shall have the right, power and authority and it shall be his duty to require of any property owner an inspection of his books and accounts, papers, memoranda and records, and he shall have the right to examine in full the same, and may from his books and accounts make an estimate of the value of all property to be assessed. Such assessors shall also, if in their opinion it be necessary, put upon oath the owner, agent or employees of the owner, and propound to him or them, such questions as will elicit from him, or them, the actual cash value of any property subject to assessment. Such assessors shall have the right and power to inquire into and ascertain the insured value of any and all property, or into the value at which the same has been insured previously and to ascertain the amount of fire insurance carried on any and all property which shall include fire insurance carried on stocks of merchandise, or goods kept for use or sale, machinery, fixtures or other property, and in fixing the value of property for assessment the amount of fire insurance carried and the value of

the property as shown by the books and accounts of the owner shall be taken into consideration. If such assessors are advised or have reason to believe that the list of taxable property furnished by any person is incomplete or incorrect, or if any property has been undervalued, they shall assess the same and add it to the assessment roll at its true value.

(2) In the performance of the duties and in the exercise of the powers herein vested in and imposed upon the tax assessor, such assessors and their deputies shall have the authority to enter, during reasonable hours, the premises or places of business of any person other than a house, used as a place of residence.

(3) In the performance of a contract entered into pursuant to Section 27-35-165(2)(a), the employees of private firms who actually appraise property shall have the authority to enter, during reasonable hours, the premises or places of business of any person other than a house, used as a place of residence.

(4) Private consultants hired pursuant to Section 27-35-165(2)(b) who actually appraise property shall have the authority to enter, during reasonable hours, the premises or places of business of any person other than a house, used as a place of residence.

SOURCES: Codes, 1930, § 109; 1942, § 9097; Laws, 1956, ch. 401; Laws, 2003, ch. 468, § 3, eff from and after Oct. 1, 2003.

Cross References — Exercise of authority granted by this section by Commissioner of Revenue during annual visits to counties, see § 27-3-51.

ATTORNEY GENERAL OPINIONS

The Tax Assessor may require receipts to verify a particular land use. Goff, March 27, 1998, A.G. Op. #98-0136.

While a county board of supervisors has ample authority in the law to examine property listed on the tax rolls as tax exempt and to ask for information from the property owner in order to determine the correctness of the exemption, there is no authority under the home rule statute for the county to monitor hospitals for compliance with § 27-31-1(f). Haque, Feb. 22, 2002, A.G. Op. #02-0039.

RESEARCH REFERENCES

ALR. Presumptions and evidence respecting identification of land on which property taxes were paid to establish adverse possession. 36 A.L.R.4th 843.

§ 27-1-25. To devote full time to office.

The county assessor shall devote his entire time to the duties of his office. The office of the assessor shall be open for business at all such times as other county offices within the county are required, pursuant to Section 25-1-99, Mississippi Code of 1972, to be open for business and, except when necessarily absent on official business, the assessor, or his deputy, shall remain in the assessor's office during the time the office is open for business.

SOURCES: Codes, 1930, § 105; 1942, § 9093.

ATTORNEY GENERAL OPINIONS

A board of supervisors is vested with the power to purchase real estate on which to construct public health buildings and clinics sponsored by the public health units of any county, or a public health building to house the county health department, out of the general fund and, provided that ultimate control and management of the facilities remains in the hands of local government, the operation of the building may be done pursuant to contract. Gex, January 9, 1998, A.G. Op. #97-0801.

§ 27-1-27. Supervisors to provide office.

The board of supervisors of each county shall provide for the use of the county assessor a suitable office which shall be located at a place where the county assessor is required to maintain his office pursuant to Section 25-1-99, Mississippi Code of 1972.

SOURCES: Codes, Hemingway's 1921 Supp. § 3811k; 1930, § 219; 1942, § 9098; Laws, 1920, ch. 131.

ATTORNEY GENERAL OPINIONS

A municipality may not enforce violations of a zoning ordinance by discontinuing utility services. Section 17-1-27 sets forth the penalties which a municipality may incorporate in a zoning ordinance. Davis, February 7, 1996, A.G. Op. #96-0039.

§ 27-1-29. Delivery of books and other documents to successors in office.

At the expiration of his term of office, each assessor and tax collector or assessor shall deliver to his successor all books, papers, receipts, assessment rolls, and other documents pertaining to the office of assessor in like manner as the tax collector under the provisions of Section 27-29-31, Mississippi Code of 1972. Each sheriff and tax collector whose term of office shall expire in 1972 shall deliver documents of his office to the succeeding tax collector whether the holder of a separate office or the assessor and tax collector.

SOURCES: Codes, 1942, § 9098-07; Laws, 1968, ch. 369, § 16, eff from and after passage (approved August 8, 1968).

§ 27-1-31. Repealed.

Repealed by Laws, 1972, ch. 478, § 2, eff from and after October 1, 1973. [Codes, 1942, § 9098-06; Laws, 1968, ch. 369, § 14; 1972, ch. 478, § 1]

Editor's Note — Former § 27-1-31 related to a supplemental tax levy in certain counties.

§ 27-1-32. Additional funds for offices of sheriff, tax assessor, and tax collector in certain counties.

Should the board of supervisors of any county in the state with a total assessed valuation of less than One Hundred Fifty Million Dollars ($150,000,000.00) determine that the fees to be collected by the offices of sheriff, assessor, tax collector, or assessor and tax collector shall be insufficient to pay the operating budget of any one or more of said offices, said board may set aside, appropriate and expend moneys from the general fund for the purpose of supplementing the budget of any one or more of said offices.

Provided, further, the board of supervisors of any Class 1 county bordering on the Pearl River, having two (2) judicial districts, wherein is housed the seat of State Government, and wherein U.S. Highways 80 and 49 intersect is hereby authorized to set aside, appropriate and expend moneys from the general fund for the purpose of supplementing the budget of the offices of sheriff, tax collector and tax assessor.

Provided, further, the board of supervisors of any Class 1 county bordering on the State of Alabama traversed by U.S. Highway 90 and having an assessed valuation according to the 1972 assessment rolls of One Hundred Thirty-two Million Seven Hundred Seventy-two Thousand Sixty-seven Dollars ($132,772,067.00) may, in its discretion, set aside, appropriate and expend moneys from the general fund for the purpose of supplementing the budget of the tax collector, tax assessor and sheriff.

SOURCES: Laws, 1973, ch. 461, §§ 1, 2; Laws, 1975, ch. 378, § 1; Laws, 1976, ch. 461; Laws, 1986, ch. 400, § 19, eff from and after October 1, 1986.

§ 27-1-33. Tax collection authority of sheriff limited.

The sheriffs shall retain all authority and liabilities heretofore possessed by or imposed upon said sheriffs but it shall not be their responsibility to collect taxes except under levy of execution.

SOURCES: Codes, 1942, § 9098-01; Laws, 1968, ch. 369, § 6, eff from and after the first Monday in January, 1972.

§§ 27-1-35 and 27-1-37. Repealed.

Repealed by Laws of 2009, ch. 546, § 24, effective upon passage, April 15, 2009.

§ 27-1-35. [Codes, 1906, § 118; Hemingway's 1917, § 3462; 1930, § 103; 1942, § 9091.]

§ 27-1-37. [Codes, 1906, § 119; Hemingway's 1917, § 3463; 1930, § 104; 1942, § 9092.]

Editor's Note — Former § 27-1-35 required county assessors to make an annual enumeration of all the ex-confederate soldiers and widows of deceased confederate soldiers.

Former § 27-1-37 provided for compensation to county assessor for enumeration.

MISSISSIPPI TAX COLLECTORS EDUCATION AND CERTIFICATION PROGRAM

SEC.

27-1-51. Mississippi Tax Collectors Education and Certification Program; levels of certification; reimbursement of certain expenses for attending certified collection school; salary supplement for attaining certain levels of certification.
27-1-53. Education and Certification Board created; board to administer and conduct education and training programs and examinations and set minimum requirements for obtaining certification; composition of board.
27-1-55. Frequency and location of certification courses.
27-1-57. Board to conduct examination and certification program for collector of Revenue I and II certifications and administer program for Mississippi Collector of Revenue certification.
27-1-59. Collector of Revenue I and Collector of Revenue II examinations; subjects covered in examinations.
27-1-61. Frequency, location and design of examinations.
27-1-63. Board to design curriculum for tax collector and assessor-tax collector certification candidates.
27-1-65. Eligibility to apply for and take examinations.
27-1-67. Certification as Collector of Revenue I, Collector of Revenue II or Mississippi Collector of Revenue; revocation of certificate; notice and hearing.
27-1-69. Collection by Center for Governmental Training and Technology of fees for examinations and certifications; use of funds.

§ 27-1-51. Mississippi Tax Collectors Education and Certification Program; levels of certification; reimbursement of certain expenses for attending certified collection school; salary supplement for attaining certain levels of certification.

(1)(a) The Office of the State Auditor shall establish and implement a Mississippi Tax Collectors Education and Certification Program under which county tax collectors and assessor-tax collectors and their deputies may attain certification as a tax collector or assessor-tax collector of state, county or municipal revenue. The Education and Certification Board, created under Section 27-1-53, in cooperation with the Center for Governmental Training and Technology within the Mississippi State University Extension Service, shall administer and conduct the education and training programs and examinations as may be appropriate for those persons to attain the certification, as directed by the Office of the State Auditor through its rules and regulations for the efficient administration of the programs and examinations authorized under Sections 27-1-51 through 27-1-69. There shall be three (3) levels of certification: Collector of Revenue I (CR 1), Collector of Revenue II (CR 2), and the Mississippi Collector of Revenue (MCR).

(b) Counties having not more than fifteen thousand (15,000) parcels of real property shall have a minimum of two (2) Collectors of Revenue I (CR 1), and counties having more than fifteen thousand (15,000) parcels of real property shall have a minimum of three (3) Collectors of Revenue I (CR 1).

(2)(a) In any year in which a county tax collector or assessor-tax collector takes office for the first time, the Office of the State Auditor shall require training sessions to be conducted in accordance with rules and regulations adopted by the office for these new officials. These sessions shall be held at sufficiently convenient locations throughout the state and at times that are sufficient to provide each county tax collector and assessor-tax collector with an opportunity to attend the training.

(b) To ensure that all newly elected or appointed tax collectors and assessor-tax collectors have an opportunity to attend the training sessions required by this section, the Office of the State Auditor shall require the training sessions to be conducted in each congressional district within the state.

(3) When any tax collector, assessor-tax collector, or the deputy thereof, travels outside of his county to attend a certified collection school approved by the Office of the State Auditor, that person shall receive a reimbursement of expenses for the travel at the same rate for mileage, food and lodging as allowed under Section 25-3-41. However, mileage shall not be authorized when the travel occurs by use of a motor vehicle owned by the county. All expenses reimbursed for attending a certified collection school shall be charged against the approved budget of the county tax collector or assessor-tax collector.

(4) The Office of the State Auditor shall have plenary authority to prescribe forms and to promulgate rules and regulations necessary to implement the provisions of Sections 27-1-51 through 27-1-69.

(5) The county tax collector or assessor-tax collector shall select a candidate from among his deputies to attend the certification program described in Sections 27-1-51 through 27-1-69.

(6)(a) When any tax collector or deputy tax collector holds a valid certificate of educational recognition from the Education and Certification Board as established by Section 27-1-67 by attaining certification as a Collector of Revenue I (CR 1), he shall receive an additional Two Thousand Dollars ($2,000.00) annually beginning the next fiscal year after completion.

(b) When any tax collector or deputy tax collector holds a valid certificate of educational recognition from the Education and Certification Board as established by Section 27-1-67 by attaining certification as a Collector of Revenue II (CR 2), he shall receive an additional Two Thousand Dollars ($2,000.00) annually beginning the next fiscal year after completion.

(c) When any tax collector or deputy tax collector holds a valid certificate of educational recognition from the Education and Certification Board as established by Section 27-1-67 by attaining certification as a Mississippi Collector of Revenue (MCR), he shall receive an additional Two Thousand Five Hundred Dollars ($2,500.00) annually beginning the next fiscal year after completion.

SOURCES: Laws, 2010, ch. 434, § 1; Laws, 2011, ch. 383, § 1; Laws, 2014, ch. 337, § 1, eff from and after Oct. 1, 2014.

Editor's Note — By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-53. Education and Certification Board created; board to administer and conduct education and training programs and examinations and set minimum requirements for obtaining certification; composition of board.

A seven-member Education and Certification Board is created to administer and conduct the education and training programs and examinations under the Mississippi Tax Collectors Education and Certification Program. The Education and Certification Board shall set the minimum requirements for obtaining certification of each level of certification. The board shall consist of the following members:

(a) The President of the Mississippi Assessors and Collectors Association, who shall serve on the board during his term as president;

(b) The State Auditor, or his designee;

(c) One (1) member to be appointed by the State Auditor;

(d) One (1) member appointed by the President of the Mississippi Assessors and Collectors Association;

(e) One (1) member representing the Center for Governmental Training and Technology; and

(f) Two (2) members appointed by the Commissioner of Revenue.

SOURCES: Laws, 2010, ch. 434, § 2, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:

"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-55. Frequency and location of certification courses.

(1) As required in the rules and regulations adopted by the Office of the State Auditor, the Education and Certification Board, in cooperation with the Center for Governmental Training and Technology within the Mississippi State University Extension Service, shall conduct the continuing education sessions for tax collectors, assessor-tax collectors and their deputies on an annual basis. These sessions shall be held at sufficiently convenient locations throughout the state.

(2) Sessions shall be offered a number of times that are sufficient to provide each Collector of Revenue I assessor and Collector of Revenue II

assessor with an opportunity to attend continuing education sessions every two (2) years to maintain certification for each level.

SOURCES: Laws, 2010, ch. 434, § 3, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:
"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."
By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-57. Board to conduct examination and certification program for collector of Revenue I and II certifications and administer program for Mississippi Collector of Revenue certification.

(1) The Education and Certification Board shall conduct a tax collector and assessor-tax collector examination and certification program for Collector of Revenue I and Collector of Revenue II certifications, and administer a program for Mississippi Collector of Revenue tax collector and assessor-tax collector certification.

(2) At the direction of the Office of the State Auditor, the board shall design and implement the programs in a manner that maximizes the number of certified county tax collectors and assessor-tax collectors involved in the tax collection process.

SOURCES: Laws, 2010, ch. 434, § 4, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:
"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."
By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-59. Collector of Revenue I and Collector of Revenue II examinations; subjects covered in examinations.

The Education and Certification Board, in cooperation with the Center for Governmental Training and Technology within the Mississippi State University Extension Service, shall design two (2) tax collector and assessor-tax collector examinations, to be called "Collector of Revenue I" and "Collector of Revenue II." All citizens of Mississippi are eligible to apply for and to be examined under "Collector of Revenue I" and "Collector of Revenue II" examinations, subject only to the resources and limitations of the board in conducting the examinations. Both examinations shall cover the subjects of real estate appraising, accounting, property tax law and collection procedures.

Successful performance on the Collector of Revenue I examination requires the minimum knowledge needed for effective performance as a county tax collector or assessor-tax collector. Success on the Collector of Revenue II examination requires substantial knowledge of the subjects covered in the examination.

SOURCES: Laws, 2010, ch. 434, § 5, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:

"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-61. Frequency, location and design of examinations.

(1) Examinations shall be held each year at the times prescribed by the Education and Certification Board in Jackson, Mississippi, and at not less than four (4) other convenient locations chosen by the board.

(2) The Education and Certification Board may not limit the number of individuals who take the examination and shall provide an opportunity for all enrollees at each session to take the examination at that session.

(3) The Education and Certification Board shall:

(a) Give both the Collector of Revenue I examination and the Collector of Revenue II examination in a format prescribed by the board; and

(b) Design both examinations to approximate the work that a county tax collector or assessor-tax collector is required to perform, including the use of appropriate computer applications.

SOURCES: Laws, 2010, ch. 434, § 6, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:

"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-63. Board to design curriculum for tax collector and assessor-tax collector certification candidates.

The Education and Certification Board shall design a curriculum for Mississippi Collector of Revenue county tax collector and assessor-tax collector certification candidates that:

(a) Consists of tested courses offered by nationally recognized assessing organizations; and

(b) Requires superior knowledge of assessment administration and property valuation concepts.

SOURCES: Laws, 2010, ch. 434, § 7, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:

"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-65. Eligibility to apply for and take examinations.

Any county tax collector, assessor-tax collector, or the deputy thereof, may apply for and take the Collector of Revenue I examination. Any person who is successful on the Collector of Revenue I examination may apply for and take the Collector of Revenue II examination. Any person who is successful on the Collector of Revenue II examination may apply for Mississippi Collector of Revenue certification.

SOURCES: Laws, 2010, ch. 434, § 8, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:

"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

§ 27-1-67. Certification as Collector of Revenue I, Collector of Revenue II or Mississippi Collector of Revenue; revocation of certificate; notice and hearing.

(1) The Education and Certification Board shall certify all persons who successfully complete a certification program under Sections 27-1-51 through 27-1-69 and shall furnish each successful certification applicant with a certificate that prominently displays the person's name and the fact that the person is a certified Mississippi county tax collector or assessor-tax collector with the designation as a Collector of Revenue I, Collector of Revenue II or Mississippi Collector of Revenue.

(2) The Education and Certification Board shall revoke the certification of an individual if the board reasonably determines that the individual committed fraud or misrepresentation with respect to:

(a) The preparation, administration or taking of the examination for Collector of Revenue I or Collector of Revenue II certification; or

(b) Completion of the curriculum for Mississippi Collector of Revenue certification.

(3) The Education and Certification Board shall give notice and hold a hearing to consider all of the evidence about the fraud or misrepresentation before deciding whether to revoke an individual's certification.

SOURCES: Laws, 2010, ch. 434, § 9, eff October 1, 2010.

Editor's Note — Laws of 2010, ch. 434, § 12, provides:

"SECTION 12. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 2010, whichever occurs later."

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the text of subsection (1) was corrected by inserting the word "program" following "...persons who successfully complete a certification."

§ 27-1-69. Collection by Center for Governmental Training and Technology of fees for examinations and certifications; use of funds.

The Education and Certification Board shall establish a fair and reasonable fee for the examinations and certifications of county tax collectors, assessor-tax collectors and their deputies authorized under Sections 27-1-51 through 27-1-69. Such fee shall be collected by the Center for Governmental Training and Technology within the Mississippi State University Extension Service and used for:

(a) Testing and training of county tax collectors, assessor-tax collectors and their deputies; and

(b) Administration of the Mississippi Collector of Revenue Certification Program and the design of its curriculum under Sections 27-1-57 and 27-1-63.

SOURCES: Laws, 2010, ch. 434, § 10; Laws, 2011, ch. 383, § 2, eff from and after passage (approved Mar. 14, 2011.)

Editor's Note — By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2010, ch. 434.

CHAPTER 3

Department of Revenue

Sec.
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27-3-3. Commissioner of Revenue of Department of Revenue to be executive officer.
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27-3-11. Repealed.
27-3-13. Employees.
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27-3-15. Bonds of employees.
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preservation; destruction of paper record after digital or electronic preservation.
27-3-63. Audit of books outside of state to determine tax liability.
27-3-65. Audit of books outside state to determine tax liability; designation of agents to make audit.
27-3-67. State taxing agency to have access to confidential information of other state taxing agencies.
27-3-69. Recovery of interest and penalties; apportionment.
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27-3-73. Secrecy of tax returns; release of certain information about individuals who are delinquent in payment of child support or under investigation for fraud or abuse of state or federal program.
27-3-75. Repealed.
27-3-77. Certain individual tax records exempt from public access requirement.
27-3-79. Penalties for tax evasion; statute of limitations for tax evasion.
27-3-80. Creation of task force to facilitate investigation and prosecution of drug trafficking kingpins regarding tax evasion and other crimes; reporting and determination of possible violations of law; employment of criminal investigator; confidentiality of information; definitions.
27-3-81. Required payment of taxes, when liability exceeds certain sum, by wire transfer or other means making funds immediately available; penalty and interest.
27-3-83. Regulation of manner and method of filing of tax returns and other tax documents and information submitted to Department of Revenue; electronic filing mandate for certain taxpayers; exception; alternative forms of signature; effect of electronic or paper reproduction of form or document; penalties for violations of regulations; signing document filed with department is swearing under oath that all information provided is true and correct; release of information to authorized individuals.

Editor's Note — This chapter was amended extensively by Laws of 2009, ch. 492, effective from and after July 1, 2010.

§ 27-3-1. Department of Revenue created; Commissioner of Revenue; term; qualifications; bond; removal from office.

(1) There is hereby created a Department of Revenue, the head of which shall be the Commissioner of Revenue, who shall be appointed by the Governor, with the advice and consent of the Senate. Each term of office of the Commissioner of Revenue shall be for six (6) years, or until his successor shall be appointed and qualified. The Governor shall include in his appointment, the expiration date of the appointment. Vacancies shall be filled by the Governor for the unexpired portion of the term in which the vacancy occurs.

(2) The Commissioner of Revenue shall be a qualified elector, shall have at least a bachelor's degree from an accredited college or university, and shall possess a special knowledge of taxation and revenue as pertaining to the State of Mississippi. The Commissioner of Revenue shall be full time and shall not be actively engaged in any other business or occupation.

(3) The Commissioner of Revenue shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath of office prescribed by the Constitution, shall file the oath in the Office of the Secretary of State, and shall execute a bond in some surety company authorized to do business in the state, to be approved by the Governor, and filed in the Office of the Secretary of State in the penal sum of Two Hundred Fifty Thousand Dollars ($250,000.00), conditioned for the faithful and impartial discharge of the duties of his office. The premium on the bond shall be paid as provided by law out of funds appropriated to the Department of Revenue.

(4) The Commissioner of Revenue is not subject to removal from office other than by impeachment or by removal from office as provided for under Section 25-5-1, except that in addition to impeachment and removal, the Commissioner of Revenue may also be removed from office for a criminal conviction for violating the Internal Revenue Code.

SOURCES: Codes, 1942, §§ 9197, 9198; Laws, 1932, ch. 119; Laws, 1938, ch. 150; Laws, 1973, ch. 431, § 1; Laws, 1980 ch. 561, § 6; Laws, 2009, ch. 492, § 9, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Administration of homestead exemption law, see § 27-33-41.

Department of Revenue as assessors of railroads and other public service corporations, see § 27-35-301.

Collection by Department of Revenue of sums due state from reserved mineral interests, see § 29-1-125 et seq.

Administration of local option alcoholic beverage control law, see § 67-1-19.

RESEARCH REFERENCES

ALR. Validity, construction, and application of regulation regarding outside employment of governmental employees or officers. 94 A.L.R.3d 1230.

Am Jur. 16B Am. Jur. Legal Forms 2d, State and Local Taxation § 238:9 (bond of tax official).

§ 27-3-2. Name of proposed commissioner to be submitted to senate for advice and consent; chairman of State Tax Commission to serve as Commissioner of Revenue until person appointed by governor has been appointed and qualified.

(1) No person appointed by the Governor as Commissioner of Revenue under the terms of Section 27-3-1 shall be eligible to take office unless his name shall have been submitted to the Mississippi Senate for its advice and consent at least thirty (30) days prior to the scheduled adjournment of the regular session of the Legislature being held in the calendar year in which the term of the office of the incumbent shall expire.

(2) As to the appointment of the Commissioner of Revenue under Section 27-3-1 for the term that begins on July 1, 2010, and expires on June 30, 2016, for purposes of subsection (1) of this section, the Chairman of the State Tax Commission whose term expires on June 30, 2010, shall be deemed to be the incumbent of this position and shall serve as the Commissioner of Revenue until the person appointed by the Governor to fill this term has been appointed and qualified.

(3) If for any reason an appointment by the Governor under Section 27-3-1 is not given the advice and consent of the Mississippi Senate prior to the adjournment of such regular session, the Governor may submit another appointment at any time to the Mississippi Senate for its advice and consent at a regular or extraordinary session of the Legislature.

(4) The prohibition contained in subsection (1) of this section shall not apply when a vacancy shall occur by death or resignation of the incumbent.

SOURCES: Laws, 1973, ch. 431, § 2; Laws, 2002, 1st Ex. Sess., ch. 1, § 1; Laws, 2009, ch. 492, § 10, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-3-3. Commissioner of Revenue of Department of Revenue to be executive officer.

The Commissioner of Revenue of the Department of Revenue shall be the executive officer of the Department of Revenue. He shall have the power and authority to perform all duties and powers prescribed by the laws of this state to be performed by the Chairman of the State Tax Commission, the Commissioner of Revenue, the State Tax Commission or the Department of Revenue. The commissioner shall have the power and authority to enforce all rules and regulations promulgated by him, the Chairman of the State Tax Commission or the State Tax Commission.

SOURCES: Codes, 1942, § 9198; Laws, 1932, ch. 119; Laws, 1938, ch. 150; Laws, 1980, ch. 561, § 7; Laws, 2009, ch. 492, § 11, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Duties of the state fire marshal with respect to administration of provisions regarding liquified petroleum gas, see § 75-57-3.

§ 27-3-4. Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue.

(1) Except for the duties and powers devolved upon the Board of Tax Appeals by Section 27-4-3, the Commissioner of Revenue acting through the Department of Revenue shall on and after July 1, 2010, exercise those powers, duties and functions heretofore vested in the Mississippi State Tax Commission, the State Tax Commission, the Tax Commission, the Commissioner of Revenue, the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission and/or the Chairman of the Tax Commission.

(2) Except for those minutes, orders and records of the three-member State Tax Commission which are in the possession of the Secretary of the State Tax Commission and any other property which is transferred from the State Tax Commission to the Board of Tax Appeals, all files, documents, records, property, tangible and intangible, data and funds belonging to and/or in the possession of the State Tax Commission immediately prior to July 1, 2010 shall pass to the Department of Revenue on July 1, 2010, without the need of the execution of any documents. In regard to such files, documents, records, property, data and funds, the creation of the Department of Revenue on July 1, 2010, shall be treated as only a change in the name of the entity owning or possessing such files, documents, records, property, data and funds from that of the State Tax Commission to the Commissioner of Revenue of the Department of Revenue with ownership, possession and custody remaining in the same entity.

(3) In regard to any action taken by the Chairman of the State Tax Commission and/or by the State Tax Commission prior to July 1, 2010, the creation of the Department of Revenue and the transfer of powers, duties and functions to the Commissioner of Revenue of the Department of Revenue from the Chairman of the State Tax Commission and from the State Tax Commission as set out in subsection (1) of this section shall be treated as only a change in the name of the entity taking such action from the Chairman of the State Tax Commission to the Commissioner of Revenue of the Department of Revenue or from the State Tax Commission to the Department of Revenue, and the Commissioner of Revenue acting through the Department of Revenue shall succeed to any right, duty or obligation as the result of such action and shall be treated as the same entity that took such action without the execution and/or filing of any document. Any action taken by the Commissioner of Revenue, including those taken by and through the Department of Revenue, after July 1, 2010, in regard to any interest, right, duty or obligation arising from the actions of the Chairman of the State Tax Commission and/or the State Tax Commission prior to July 1, 2010, shall be taken in the name of the Commissioner of Revenue of the Department of Revenue or in the name of the Department of Revenue and be treated as an action by the official or entity which originally took the action that gave rise to such interest, right, duty or

obligation, including, but not limited to, any interest, right or obligation arising from the execution or performance of a contract or agreement, the issuance of a tax assessment, the issuance of a tax lien, the issuance and execution of a distress warrant and the issuance of a notice to extend the time period for issuing a tax assessment.

(4) In regard to the promulgation and adoption of any rule or regulation by the State Tax Commission and/or the Chairman of the State Tax Commission prior to July 1, 2010, the creation of the Department of Revenue and the transfer of powers, duties and functions to the Commissioner of Revenue of the Department of Revenue from the State Tax Commission and Chairman of the State Tax Commission as set out in subsection (1) of this section shall be treated as only a change in the name of the official or agency that adopted and promulgated such rules and regulations from the Chairman of the State Tax Commission or the State Tax Commission to the Commissioner of Revenue of the Department of Revenue, and after July 1, 2010, the Commissioner of Revenue of the Department of Revenue is authorized and empowered to enforce such rules or regulations as the official or agency that originally adopted and promulgated such rules and regulations without having to readopt or re-promulgate such rules and regulations. In such rules and regulations, after July 1, 2010, any reference to Mississippi State Tax Commission, the State Tax Commission, the Tax Commission and/or commission shall mean Department of Revenue and any reference to the Commissioner of Revenue, the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission, the Chairman of the Tax Commission and/or chairman shall mean Commissioner of Revenue of the Department of Revenue.

(5) The terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue, and, more particularly, such words or terms shall mean the Department of Revenue whenever they appear in Sections 7-5-25, 7-7-49, 9-21-51, 11-51-77, 13-3-157, 13-3-169, 17-17-53, 17-17-219, 17-17-327, 17-17-415, 17-17-423, 19-2-11, 19-5-357, 19-9-151, 21-29-229, 21-29-233, 21-33-3, 21-33-5, 21-33-9, 21-33-13, 21-33-43, 21-33-45, 21-33-47, 21-33-205, 21-33-207, 21-33-209, 21-45-21, 25-1-73, 25-1-87, 25-3-1, 25-3-3, 25-3-15, 25-15-9, 25-17-9, 25-53-151, 25-55-15, 25-58-21, 25-60-1, 25-65-5, 25-65-7, 27-5-101, 27-5-103, 27-5-155, 27-5-159, 27-7-901, 27-7-903, 27-8-19, 27-17-423, 27-19-11, 27-19-27, 27-19-31, 27-19-39, 27-19-40, 27-19-41, 27-21-7, 27-21-19, 27-31-1, 27-31-31, 27-31-37, 27-31-38, 27-31-87, 27-31-101, 27-31-107, 27-31-109, 27-31-113, 27-35-15, 27-35-17, 27-35-19, 27-35-23, 27-35-25, 27-35-35, 27-35-50, 27-35-55, 27-35-75, 27-35-77, 27-35-81, 27-35-97, 27-35-111, 27-35-119, 27-35-123, 27-35-127, 27-35-131, 27-35-133, 27-35-135, 27-35-141, 27-35-143, 27-35-145, 27-35-147, 27-35-165, 27-35-167, 27-35-301, 27-35-303, 27-35-305, 27-35-307, 27-35-310, 27-35-313, 27-35-321, 27-35-327, 27-35-337, 27-35-509, 27-35-511, 27-35-513, 27-35-515, 27-35-519, 27-35-525, 27-35-527, 27-35-531, 27-37-19, 27-37-21, 27-37-23, 27-37-27, 27-37-29, 27-37-

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(6) The terms “Chairman of the Mississippi State Tax Commission,” “Chairman of the State Tax Commission,” “Chairman of the Tax Commission” and “chairman” appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue, and, more particularly, such words or terms shall mean the Commissioner of Revenue of the Department of Revenue whenever they appear in Sections 7-5-25, 13-3-157, 13-3-169, 21-33-205, 21-33-207, 21-33-209, 25-53-151, 25-60-1, 27-31-31, 27-41-69, 27-75-16, 31-17-3, 31-19-29, 57-62-9, 57-73-21, 65-1-46 and 75-57-2.

SOURCES: Laws, 2009, ch. 492, § 6, eff from and after July 1, 2010.

Editor’s Note — Laws of 2009, ch. 492, § 146 provides:

“SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010.”

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

“SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the

administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Section 27-31-87 referred to in (5) was repealed by Laws of 2008, ch. 381, § 5, effective from and after January 1, 2009.

Section 83-34-49 referred to in (5) was repealed by its own terms, effective from and after July 1, 2010.

§§ 27-3-5 and 27-3-7. Repealed.

Repealed by Laws, 1980, ch. 561, § 42, eff from and after July 2, 1980.

§§ 27-3-5 and 27-3-7. [Codes, 1942, § 9198; Laws, 1932, ch. 119; Laws, 1938, ch. 150.]

Editor's Note — Former §§ 27-3-5 and 27-3-7 pertained to the powers and duties of an ad valorem commissioner, and an excise commissioner, respectively.

§ 27-3-9. Compensation of Commissioner of Revenue.

The Commissioner of Revenue shall receive an annual salary fixed by the State Personnel Board. The actual traveling expenses of the commissioners and of the employees of the Department of Revenue incurred in the performance of their official duties shall be allowed, and such salaries and expenses shall be payable out of funds appropriated for the expenses of the Department of Revenue.

SOURCES: Codes, 1942, § 9203; Laws, 1932, ch. 119; Laws, 2009, ch. 492, § 12, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the

Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-3-11. Repealed.

Repealed by Laws, 2009, ch. 492, § 143, effective from and after July 1, 2010.

§ 27-3-11. [Codes, 1942, § 9199; Laws, 1932, ch. 119; Laws, 1938, ch. 150.]

Editor's Note — Former § 27-3-11 provided for a secretary of the tax commission.

§ 27-3-13. Employees.

The Commissioner of Revenue is empowered to employ such accountants, appraisers, information systems programmers, information systems technicians, information systems managers, clerical help, stenographers, and such other assistants and/or attorneys as he may deem necessary to the proper discharge of the duties of the Department of Revenue, to prescribe their duties and to fix the compensation of each employee within the rules, regulations and guidelines of the State Personnel Board. Such employees may be used interchangeably in the administration of the various duties imposed by law upon the commissioner in the several offices of the Department of Revenue. Further, the Commissioner of Revenue may designate any ten (10) employees of the commission to be law enforcement officers, as defined in Section 45-6-3, with police powers to enforce any laws administered by the Department of Revenue. Temporary employees may be employed as hereinabove, when in the opinion of the commissioner a seasonal press of business requires, except that such temporary employees shall be retained no longer than is necessary to the discharge of the duties imposed by law upon the department.

The Commissioner of Revenue may require any employee with access to federal tax information to be fingerprinted and the commissioner may request a background check regarding such employee from any state or federal agency.

SOURCES: Codes, 1942, §§ 9200, 9213-02; Laws, 1932, ch. 119; Laws, 1962, ch. 588, § 2; Laws, 1970, ch. 542, § 10; Laws, 1980, ch. 561, § 8; Laws, 1993, ch. 432, § 1; Laws, 2009, ch. 492, § 13; Laws, 2016, ch. 317, § 1, eff from and after passage (approved Apr. 4, 2016.)

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the

administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2016 amendment added the last paragraph.

Cross References — County regulation of minimum requirements for certification of tax assessors as appraisers, see § 27-3-52.

Commission's agents to administer tobacco tax law, see § 27-69-71.

RESEARCH REFERENCES

Am Jur. 16B Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:5-238:8 (employment contract for tax investigator).

§ 27-3-14. Repealed.

Repealed by Laws of 1992, ch. 496, § 25, eff from and after July 1, 1992. [Laws, 1981, ch. 366, § 10, eff from and after November 1, 1981].

Editor's Note — Former § 27-3-14 provided for a training course for employees enforcing weight laws and motor vehicle privilege tax laws. Similar provisions can now be found in § 65-1-44.

§ 27-3-15. Bonds of employees.

The Commissioner of Revenue may require such of his employees as authorized by this chapter to execute bonds in some surety company authorized to do business in the State of Mississippi in such sum as it may order not to exceed for any one (1) employee the sum of Twenty-five Thousand Dollars ($25,000.00), and the premium on the bond shall be paid out of any money appropriated for the general expenses of the Department of Revenue.

SOURCES: Codes, 1930, § 7020; 1942, § 9215; 1930, ch. 240; Laws, 2009, ch. 492, § 14, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

RESEARCH REFERENCES

Am Jur. 16B Am. Jur. Legal Forms 2d, State and Local Taxation § 238:9 (bond of tax official).

§ 27-3-17. Quarters and equipment for Department of Revenue.

It is the duty of the Department of Finance and Administration to provide suitable and adequate quarters and equipment for the Department of Revenue, for its office force and for filing its records, books, papers and assessment rolls.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769f; 1930, § 7003; 1942, § 9206; Laws, 1918, ch. 228; Laws, 2009, ch. 492, § 15, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-3-19. Official seal.

(1) The Department of Revenue shall have a seal which shall be in the form of a circle with the image of an eagle in the center and around the margin the words: "Commissioner, Mississippi Department of Revenue," and under the

image of the eagle the word: “Official.” The seal, in the discretion of the Commissioner of Revenue, may be of a raised or engraved design or printed.

(2) The Commissioner of Revenue or any employee of the Department of Revenue in the performance of duties assigned to the Commissioner of Revenue or to the Department of Revenue shall affix the seal prescribed in this section to every document where required by law, and to every certificate and other official paper executed by the Commissioner of Revenue or in his name under his authority where necessary or proper; and all documents authenticated with the seal and signed by the commissioner or issued under his name shall be received as evidence in all courts, investigations, and proceedings authorized by law, and may be recorded in the same manner and with like effect as a deed; and all copies of papers in the office of the Department of Revenue, certified by the Commissioner of Revenue and authenticated by the seal, shall be accepted in all matters equally and in like manner as the original.

SOURCES: Codes, 1930, § 7005; 1942, § 9207; Laws, 1926, ch. 329; Laws, 2002, ch. 306, § 1; Laws, 2009, ch. 492, § 16, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

“SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010.”

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

“SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals.”

§ 27-3-21. Repealed.

Repealed by Laws of 2009, ch. 492, § 143, effective from and after July 1, 2010.

§ 27-3-21. [Codes, 1942, § 9201; Laws, 1932, ch. 119.]

Editor's Note — Former § 27-3-21 required the state tax commission to accumulate a library on revenue laws and taxation.

§ 27-3-23. Audit of department.

The Commissioner of Revenue may forthwith have prepared a complete audit and survey of the books, records, accounts, operations and affairs of the Department of Revenue to the end of obtaining a comprehensive outline of the conditions thereof, and of securing a more economical administration of the business, duties and operations of the department. The expense incident to such audit and survey shall be paid out of the contingent fund of the department.

SOURCES: Codes, 1942, § 9202; Laws, 1932, ch. 119; Laws, 2009, ch. 492, § 17, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Information to be provided to the tax collector to assist in the enforcement and collection of the local privilege tax on drilling rigs, see § 27-17-423.

§§ 27-3-25 and 27-3-27. Repealed.

Repealed by Laws of 2009, ch. 492, § 143, effective from and after July 1, 2010.

§ 27-3-25. [Codes, 1942, § 9204; Laws, 1932, ch. 119.]

§ 27-3-27. [Codes, 1942, § 9198; Laws, 1932, ch. 119; Laws, 1938, ch. 150; Laws, 1980, ch. 561, § 9, eff from and after July 2, 1980.]

Editor's Note — Former § 27-3-25 divided the state into tax districts.

Former § 27-3-27 related to commission meetings.

§ 27-3-29. Repealed.

Repealed by Laws, 2005, ch. 499, § 36 effective from and after July 1, 2005.

§ 27-3-29. [Codes, 1942, §9198; Laws, 1932, ch. 119; Laws, 1938, ch. 150; Laws, 1980, ch. 561, § 10; Laws, 1986, ch. 391, eff from and after July 1, 1986.]

Editor's Note — Former § 27-3-29 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-3-31. Specific duties and powers.

(1) It shall specifically be the duty of the Commissioner of Revenue, and he shall have power and authority:

(a) To adopt, amend or repeal those rules or regulations necessary and proper to effectively administer the Department of Revenue and implement the duties assigned to the commissioner in this section and in any other statute as well as any duties assigned to the Department of Revenue.

(b) To develop, implement and decide questions of policy as it relates to the operation of the Department of Revenue and/or any law which the commissioner or the Department of Revenue is required to administer.

(c) To supervise and direct all administrative and technical activities of the Department of Revenue.

(d) To organize the offices, bureaus and divisions of the Department of Revenue.

(e) To coordinate the activities of the various offices, bureaus and divisions of the Department of Revenue.

(f) To delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the Department of Revenue.

(g) To make, execute and effectuate any and all agreements or contracts, including contracts for the purchase of goods and services, as are necessary.

(h) To enter into long-term or multiyear leases of real property with other state agencies.

(i) To appeal any decision of the Board of Tax Appeals that he determines should be appealed.

(j) To defend, pursue and/or appeal any suit or appeal brought by or against the Department of Revenue and/or by or against the Commissioner of Revenue in his official capacity.

(k) To confer with and advise assessing officers, boards of supervisors and other county officers as to their duties relative to ad valorem taxation under the law; and to advise them in the collection, filing and preservation of data relative to matters of assessment.

(*l*) To become familiar with property values and general conditions in the counties of the state and to direct the collection and preservation of data and information pertaining to the quantity and value of property in each county in the state, subject to assessment, necessary to enable the commissioner to determine the assessed value of classes of property and whether assessments comply with acceptable performance standards as required by Section 27-35-113.

(m) To direct the collection, preparation and preservation of data and information pertaining to the quantity, value and location of property belonging to railroads, persons, corporations and associations which is required to be assessed by the commissioner.

(n) To supervise and direct the preparation of forms for the assessment of property of railroads and public service corporations assessed by the commissioner, and the filing of their rolls or schedules of assessment.

(o) To determine the location of all property subject to assessment by the commissioner in the various counties of the state, the municipalities and taxing districts therein, and to ascertain and report as far as practicable the value and ownership of all such property.

(p) To keep informed of the work of the assessors and supervisors of the various counties of the state as required by Section 27-3-51, and to have charge of the details necessary to the equalization by the commissioner of assessments among the various counties pursuant to Section 27-35-113.

(q) To prepare all forms for tax lists, assessment rolls and perform other duties relating thereto.

(r) To prepare data and statistics relating to property assessments which are deemed advisable for publication or which may be required by the Legislature.

(s) To confer with assessors, supervisors and other local taxing officials who may have business with the Department of Revenue.

(t) To consider and approve or disapprove all orders of boards of supervisors granting homestead exemptions.

(u) To administer and enforce the "Local Option Alcoholic Beverage Control Law," being Section 67-1-1 et seq.

(v) To adopt and enforce rules and regulations prescribing the manner and method by which tax returns and documents may be filed with the Department of Revenue as provided under Section 27-3-83.

(2) The Commissioner of Revenue and any agent duly authorized by the commissioner are empowered to administer and certify oaths.

SOURCES: Codes, 1930, § 7016; 1942, § 9213; Laws, 1930, ch. 238; Laws, 1962, ch. 588, § 21; Laws, 1980, ch. 561, § 31; Laws, 1990, ch. 498, § 4; Laws, 1995, ch. 365, § 2; Laws, 2009, ch. 492, § 18, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws, 1990, ch. 498 § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Cooperation with accounting department, see § 7-7-49.

Responsibilities and duties of Department of Revenue with respect to tax on premium of fire and lightning insurers, for purposes of Public Employees' Retirement System, see §§ 21-29-229, 21-29-233.

Certification of property reappraisal as affecting repayment of money borrowed by municipalities in anticipation of taxes, see § 21-33-325.

Tax assessors and collectors, see § 27-1-1 et seq.

Information to be provided to the tax collector to assist in the enforcement and collection of the local privilege tax on drilling rigs, see § 27-17-423.

Duty of the Department of Revenue to administer the motor vehicle privilege tax, see § 27-19-1.

Duty of the Department of Revenue to establish and maintain a vehicle registration renewal system, see § 27-19-31.

Responsibilities of Department of Revenue regarding collection of motor vehicle taxes, see § 27-19-99.

Enforcement of the gasoline tax by the Department of Revenue, see § 27-55-1.

Administration by the Department of Revenue of the tax on lubricating oils, see § 27-57-1.

Duties of the Department of Revenue with respect to administration of the tax on liquefied compressed gas, see § 27-59-1.

Administration of the interstate commercial carriers motor fuel tax by the Department of Revenue, see § 27-61-1.

Water Pollution Control Revolving Fund, see § 49-17-81 et seq.

Duties of the Department of Revenue with respect to the environmental protection fee on motor fuels, see § 49-17-407.

Duties of Department of Revenue with respect to approval of educational seminars for applicants for used motor vehicle dealer's license, see § 63-17-76.

Duties of the Department of Revenue in connection with the automated statewide motor vehicle title registration system, see § 63-21-18.

Role of Mississippi Department of Revenue in seizure of and disposition of property subject to forfeiture for unlawful possession of alcoholic beverages and related property, see §§ 67-1-17, 67-1-18.

Duties of the Department of Revenue with respect to the licensing requirement for a transient vendor to transact business, see § 75-85-9.

Duties of Department of Revenue with respect to tax on gross revenues of public utilities to defray operating expenses of public service commission, see § 77-3-87.

Necessity that corporation applying for reinstatement after being administratively dissolved submit certification from Department of Revenue reciting that all taxes owed by corporation have been paid, see § 79-4-14.22.

Administration by Department of Revenue of tax imposed on premiums for legal expense insurance, see § 83-49-45.

§ 27-3-32. Repealed.

Repealed by Laws of 2009, ch. 492, § 143, effective from and after July 1, 2010.

§ 27-3-32. [Laws, 2007, ch. 580, § 17, eff from and after passage (approved Apr. 21, 2007.)]

Editor's Note — Former § 27-3-32 was entitled: Authority to enter into certain leases of real property with other state agencies.

§ 27-3-33. Prosecutions, actions, proceedings, and suits; levy on compensation owing to delinquent taxpayer.

(1) The Commissioner of Revenue shall have the power, authority and duty to direct that proceedings, actions and prosecutions be instituted to enforce the laws relating to the penalties, liabilities, and punishment of all persons, officers or agents or corporations, or others required by law to make returns of taxable property, for failure or neglect to comply with such provisions of the tax law; and to cause complaints to be made against assessors, boards of supervisors, and other officers, whose duties concern assessments, in any court of competent jurisdiction for their removal for official misconduct or neglect of such duty, as provided by law in such cases.

(2) The Commissioner of Revenue shall have the power, authority and duty to proceed by suit in the chancery court of the residence of the taxpayer or, in the case of a nonresident, in the Chancery Court of the First Judicial District of Hinds County, against all persons, corporations, companies and associations of persons for all past-due and unpaid taxes, together with any penalties, damages and interest due thereon, of any kind whatever, either of the state or any county, municipality, drainage, levee, or other taxing district, or any subdivision thereof, and for all past-due obligations and indebtedness of any character due and owing to them or any of them; but not, however, including penalties for the violation of the antitrust laws; and, provided that the duty and obligation of the Commissioner of Revenue hereunder accrues only at such time as the tax collector of the county, municipality, drainage, levee, or other taxing district, or any subdivision thereof, primarily responsible for the collection of taxes for the district has exhausted all legal remedies provided by the laws of this state.

(3) All suits by the Commissioner of Revenue under the provisions of this section, or under the provisions of Section 27-3-37 or Section 27-3-39, shall be in his official capacity for the use of the state, county, municipality, levee board or other taxing district interested; and he shall not be liable for costs, and may appeal without bond. Such suits may be tried at the return term and shall take precedence over other suits.

(4) All warrants issued by the Commissioner of Revenue for the collection of any taxes imposed by statute and collected by the Department of Revenue shall be used to levy on salaries, compensation or other monies due the delinquent taxpayer. The warrants shall be served by mail or by delivery by an agent of the Department of Revenue on the person or entity responsible or liable for the payment of the monies to the delinquent taxpayer. Once served, the employer or other person owing compensation due the delinquent taxpayer shall pay the monies over to the Department of Revenue in complete or partial satisfaction of the tax liability. Except as otherwise provided in Section 85-13-3, an answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the commissioner. Failure to pay the money over to the Department of Revenue as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other taxes. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the Department of Revenue.

SOURCES: Codes, 1930, § 7016; 1942, §§ 9213, 9213-02, 9213-08; Laws, 1930, ch. 238; Laws, 1962, ch. 588, §§ 2, 8, 21; Laws, 1970, ch. 542, § 10; Laws, 1992, ch. 457, § 1; Laws, 2001, ch. 310, § 1; Laws, 2005, ch. 380, § 1; Laws, 2006, ch. 350, § 1; Laws, 2009, ch. 492, § 19; Laws, 2017, ch. 407, § 4, eff from and after July 1, 2017.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2017 amendment added the exception at the beginning of the fourth sentence of (4); and made minor stylistic changes.

Cross References — Representation of Department of Revenue by Attorney General and district attorneys, see § 7-5-51.

Judicial appeal from tax assessments, generally, see § 11-51-77.

Suspension of Commissioner of Revenue for failure to render accounts and settle accounts, see § 27-3-45.

Recovery of interest and penalties, see § 27-3-69.

Liability of assessors and collectors of taxes, see § 27-29-29.

Collection by Department of Revenue of sums due state from reserved mineral interests, see § 29-1-125 et seq.

Role of Department of Revenue in seizure of and disposition of property subject to forfeiture for unlawful possession of alcoholic beverages and related property, see §§ 67-1-17, 67-1-18.

Criminal offense for officer's failure to perform duty, see § 97-11-37.

JUDICIAL DECISIONS

1-5. [Reserved for future use.]
6. Under Former § 27-11-49.

1-5. [Reserved for future use.]

6. Under Former § 27-11-49.

On an appeal from an order of an administrative agency, the court is limited to determining whether the order was supported by substantial evidence, was capricious or arbitrary, was beyond the agency's power, or violated some legal right of the complaining party, and the tax commission and the taxpayer could not by agreement confer jurisdiction on the circuit court to retry, de novo, the issue of the commission's assessment and collection of a tax. Mississippi State Tax Comm'n v. Mississippi-Alabama State Fair, 222 So. 2d 664 (Miss. 1969), cert. denied, 396 U.S. 940, 90 S. Ct. 374, 24 L. Ed. 2d 241 (1969).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 752 et seq.

22 Am. Jur. Pl and Pr Forms (Rev), State and Local Taxation, Forms 171 et seq.

22 Am. Jur. Pl and Pr Forms (Rev), State and Local Taxation, Forms 191 et seq.

CJS. 85 C.J.S., Taxation § 1276 et seq.

§ 27-3-35. Subpoena of witnesses.

In all cases of valuation or ownership of property which has escaped taxation, the Commissioner of Revenue may have subpoenaed witnesses to testify before any board of supervisors, board of mayor and aldermen, or other municipal governing authority, or before the commissioner himself, his designee or any other lawful taxing authority.

SOURCES: Codes, 1942, § 9213-02; Laws, 1962, ch. 588, § 2; Laws, 1970, ch. 542, § 10; Laws, 2009, ch. 492, § 20, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option

Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Subpoena for witnesses, generally, see §§ 13-3-93, 99-9-11.

§ 27-3-37. Negligent or defaulting official to be made party to suit.

In all suits against delinquent taxpayers under the provisions of Section 27-3-33 or Section 27-3-39, the officer charged with the duty of collecting the tax shall be made a party; and if it shall appear that the failure of the taxpayer to properly pay his taxes was caused by any willful default or negligence of the officer charged with the duty of collecting the tax, judgment shall be rendered against such officer for the amount of twenty percent (20%) of the amount of tax involved in addition to the amount of the recovery against the delinquent taxpayer, which additional twenty percent (20%) shall be paid into the general fund of the state treasury.

SOURCES: Codes, 1942, § 9213-09; Laws, 1962, ch. 588, § 9, eff from and after January 1, 1964.

Cross References — Suspension of Commissioner of Revenue for failure to render accounts and settle accounts, see § 27-3-45.

§ 27-3-39. Investigations of property escaping taxation; additional assessments.

The Commissioner of Revenue shall investigate and ascertain what property, if any, is escaping taxation or assessment. After the first day of February should the Commissioner of Revenue discover that any person, corporation, property, business, occupation or calling has escaped taxation for the previous calendar year or years by reason of not being assessed by either a county or municipality, it shall be his duty to give notice to the county or municipal tax assessor in writing, and the assessor shall, within ten (10) days thereafter, make the proper assessment by way of an additional assessment and file the assessment with the clerk of the board of supervisors or the clerk of the municipality, as the case may be, who shall enter the assessment on the last approved roll or rolls in his hands, and the clerk shall give ten (10) days' notice in writing to the person or corporation whose property is thus assessed, and all objections to the assessment shall be heard at the next meeting of the board of supervisors of the county or the governing authorities of the municipality. The board of supervisors or governing authorities of the municipality shall also be notified in writing by the assessor of the assessment, and the Commissioner of Revenue or his designee may appear at the meeting, and an appeal to the circuit court may be taken from the order of the board approving or disapproving the assessment by either party. If the assessment is approved and no appeal is taken, the clerk shall certify this to the Commissioner of Revenue and if the taxes are not paid within thirty (30) days thereafter, the property, if it is real estate, shall be ordered sold as provided for by law, and if it is personal the Commissioner of Revenue shall proceed to collect by distress or otherwise. If the tax assessor fails or refuses to make an assessment and report the assessment as required by this section, he shall be liable on his bond for the amount of taxes properly collectible and ten percent (10%) damages thereon.

SOURCES: Codes, Hemingway's 1917, § 7769; 1930, § 7012; 1942, §§ 9212, 9213-07; Laws, 1916, ch. 98; Laws, 1962, ch. 588, § 7; Laws, 2009, ch. 492, § 21, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Limitation on suits for assessment of property which has escaped taxation, see § 27-3-41.

Suspension of Commissioner of Revenue for failure to render accounts and settle accounts, see § 27-3-45.

Performance of duties enumerated in this section by Commissioner of Revenue or his designees during annual visits to counties, see § 27-3-51.

Assessment of persons and property escaping taxation, generally, see § 27-35-155.

Assessment of railroad property escaping taxation, see § 27-35-325.

Role of Department of Revenue in seizure of and disposition of property subject to forfeiture for unlawful possession of alcoholic beverages and related property, see §§ 67-1-17, 67-1-18.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 675 (assessment of omitted property).

CJS. 84 C.J.S., Taxation § 687.

§ 27-3-41. Limitation.

The power of the Commissioner of Revenue to institute proceedings for the assessment of property which has escaped taxation by reason of not being assessed shall expire at the end of seven (7) years from the date when his right so to do first accrued, and it shall bring all suits he is authorized to bring within six (6) years after the cause of action accrues and not thereafter.

SOURCES: Codes, 1942, § 9213-10; Laws, 1962, ch. 588, § 10; Laws, 2009, ch. 492, § 22, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Limitation of actions, generally, see § 15-1-1 et seq.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 767, 768 (time for instituting proceedings for collection).

CJS. 85 C.J.S., Taxation §§ 1301-1303.

§ 27-3-43. Certain land purchased by commissioner as successful bidder may be sold or retained in best interest of state.

When land is purchased by the Commissioner of Revenue as the successful bidder in accordance with Section 27-7-63, 27-13-37 or 27-65-65, the Commissioner of Revenue may then sell the state's interest in the land at a public or private sale to the best interest of the state. If after such purchase, the Commissioner of Revenue determines that it is not in the best interest of the state for him to sell the state's interest in the land, he shall, after the expiration of any applicable redemption period, render a full description of the land to the land commissioner, and after such rendering, the land shall be registered at the land office and sold as other state lands.

SOURCES: Codes, 1942, § 9213-11; Laws, 1962, ch. 588, § 11; Laws, 2009, ch. 492, § 23, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Suspension of Commisioner of Revenue for failure to render accounts and settle accounts, see § 27-3-45.

Department of Revenue's bidding at income tax sales, see § 27-7-63.

Conduct of sale of land for taxes, see § 27-41-59.

Land commissioner's recording of tax sales to state, see § 29-1-21.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 857-858 (purchase by state or municipality).

CJS. 85 C.J.S., Taxation § 1451 et seq.

§ 27-3-45. Settlements with State Treasurer's reports to State Auditor of public accounts.

The Department of Revenue shall settle with the State Treasurer, and pay over daily to the State Treasurer all monies collected by it each day; and it shall make a report to the State Auditor at the end of the fiscal year, giving a full account of all collections by it under the provisions of Sections 27-3-33, 27-3-37, 27-3-39, 27-3-43, 27-3-47 and 27-3-71 during the preceding fiscal year and of whom and on whose account collected. For a failure to render such account and settle and pay over all collections made by it, as required by law, the Commissioner of Revenue shall be suspended from office by the Governor in the same manner as in the case of a defaulting State Treasurer.

SOURCES: Codes, 1942, § 9213-12; Laws, 1962, ch. 588, § 12; Laws, 1984, ch. 478, § 7; Laws, 2009, ch. 492, § 24, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 1984, ch. 478, § 3, effective July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Suspension of defaulting tax collector, see § 7-1-57.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 769 (rights, duties and liabilities of collectors and sureties with respect to remitting payment).

§ 27-3-47. Political subdivisions of state not chargeable with fees; fees not to be deducted from certain funds.

No county, municipality, drainage district, levee board, or other administrative body, shall be chargeable with any fees or expenses on account of any investigation, demand or suit made or instituted by the Commissioner of Revenue; nor shall any fees or commissions be deducted or retained from any funds collected for or belonging to the state, any county, municipality, drainage district, levee district or other political subdivision, from any state or any other subdivision or department thereof. Nothing in this section shall be construed, however, to prohibit the Commissioner of Revenue from expending funds appropriated for the support of the Department of Revenue in administering the provisions hereof, and in making investigations and demands and bringing and maintaining suits and other actions hereunder.

SOURCES: Codes, 1942, § 9213-14; Laws, 1962, ch. 588, § 14; Laws, 2009, ch. 492, § 25, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Suspension of Commissioner of Revenue for failure to render accounts and settle accounts, see § 27-3-45.

§ 27-3-49. Commissioner of Revenue to investigate taxation and make recommendations to legislature.

The Commissioner of Revenue shall investigate all matters of taxation and recommend to the Legislature, at each regular session, such changes and alterations in the tax laws of the state as in his judgment he may deem best to bring about a more perfect, equitable, adequate, just and thorough system of taxation and valuation of property for state and county taxation.

SOURCES: Codes, Hemingway's 1917, § 7764; 1930, § 7008; 1942, § 9208; Laws, 1916, ch. 98; Laws, 1970, ch. 541, § 1; Laws, 2009, ch. 492, § 26, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-3-51. Annual visits to each county of the state; information concerning realty transfers; requests for and verification of realty sales data.

(1) In order that the Commissioner of Revenue may be familiar with the character and values of the several classes of property within each of the several counties of the state and of the economic conditions therein, and throughout the state, the Commissioner of Revenue, or his designees, shall annually visit each of the several counties of the state. In the course of his visitation within each county, the Commissioner of Revenue, or his designees, shall perform the duties enumerated in Sections 27-3-39 and 27-3-53, and he shall investigate the work and methods adopted by the board of supervisors and county tax assessors and confer with such officers and other well-informed persons, ascertain wherein existing laws are defective or improperly or negligently administered and shall be authorized to exercise the authority granted under Sections 27-1-21 and 27-1-23. However, any language in Section 27-1-21 and Section 27-1-23 relative to the actual assessing or appraising of property by the county or municipal tax assessor is not granted to the Commissioner of Revenue. He shall report the results of his investigation and the facts ascertained to the Governor, from time to time, when required by him, and to each session of the Legislature.

(2) The chancery clerk shall require that the current mailing address and current business or employment telephone number, if any, and current residential telephone number, if any, of each grantor and grantee be included on all deeds as a prerequisite for the deed to be filed for record after July 1,

1987. If the residential telephone number is unlisted, the grantor or grantee shall include on the deed a telephone number where he or she can be reached during business hours. If the grantee may receive mail at the address of the property transferred, then the address of the transferred property shall be the mailing address of the grantee for the purposes of this section. The information provided by the grantor and grantee shall be true and correct and complete to the best of his or her knowledge and belief under penalty of perjury under Section 97-9-61. The chancery clerk may refuse to accept delivery of any deed for filing that does not contain on the deed the information required in this section. The fact that the information provided by the grantor or grantee may be incorrect, incomplete or false, however, shall not invalidate the deed or the filing thereof for record. The Commissioner of Revenue shall annually audit the deeds filed with the chancery clerk of each county and assess a penalty of One Hundred Dollars ($100.00) against the county for each deed filed in violation of this section, and the aggregate of such sum shall be withheld by the Commissioner of Revenue from the next installment of homestead exemption reimbursement due under Section 27-33-41.

(3) The Commissioner of Revenue or his designees are hereby authorized to verify sales data regarding the transfer of real property by obtaining such information from the grantor or grantee. The information provided by the grantor or grantee to the Commissioner of Revenue or his designee shall be true, correct and complete to the best of his or her knowledge and belief under penalty of perjury under Section 97-9-61. Any information obtained in this manner shall be shared with the county tax assessors and used only for the purpose of valuing property.

(4) The Commissioner of Revenue may request sales data of Class I and Class II property from the county tax assessors in order to develop sales ratios. If a county tax assessor fails to supply accurate information requested by the Commissioner of Revenue, the commissioner shall reject the county's tax roll. The avails of the one (1) mill levy as provided for in Section 27-39-329(2)(b) shall not be expended until the county complies with such request.

SOURCES: Codes, Hemingway's 1917, § 7768; 1930, § 7009; 1942, §§ 9198, 9209; Laws, 1916, ch. 98; Laws, 1932, ch. 119; Laws, 1938, ch. 150; Laws, 1980, ch. 505, § 11, ch. 561, § 12; Laws, 1987, ch. 507, § 1; Laws, 1987, ch. 517; Laws, 2009, ch. 492, § 27, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Requirement that commissioners keep informed of the work of the assessors and supervisors in the various counties, see § 27-3-31.

JUDICIAL DECISIONS

1. In general.

Where the record title holder's true address was never on the quitclaim deed because the record title holder's cousin purchased the property in the record title holder's name and the record title holder intentionally gave the record title holder's daughter's address instead of the record title holder's own address; the tax sale was valid in spite of the failure of the clerk to send notice of the tax sale to the record title holder's address, the tax deed properly vested title in the purchaser at the tax sale, the purchaser's subsequent quitclaim deed to the buyers was valid, all clouds upon the title to the property were removed and canceled, and the title to the property was properly vested in the buyers. Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003).

§ 27-3-52. Counties to have certified appraisal personnel; continuing education; increases in compensation.

(1) The Department of Revenue shall promulgate rules and regulations setting forth the minimum requirements for which tax assessors and/or their deputy assessors or assistants, appropriate state employees, employees of planning and development districts or other persons may attain certification as an appraiser. The Department of Revenue shall establish and conduct such educational and training programs as may be appropriate to assist such persons in attaining such certification.

(2) Counties having not more than five thousand (5,000) applicants for homestead exemption shall have at least one (1) certified appraiser, and counties having more than five thousand (5,000) applicants for homestead exemption shall have at least two (2) certified appraisers; however, any county may employ any certified appraiser on a part-time basis.

(3) When any tax assessor and/or his deputies or assistants travel outside of their county to attend an appraisal school, seminar or workshop approved by the Department of Revenue, such persons shall receive as reimbursement of expenses of such travel the same mileage and actual and necessary expenses for food, lodging and travel by public carrier or private motor vehicles as is allowed under Section 25-3-41. However, mileage shall not be authorized when such travel is done by a motor vehicle owned by the county.

(4) The county board of supervisors shall reimburse the assessors, tax collectors and deputies for reasonable and necessary expenses sustained in attending annual conferences, regional conferences, schools and seminars. The

Department of Revenue shall have the authority to prescribe forms and to promulgate rules and regulations necessary to implement the provisions of this section. No expenses authorized herein shall be reimbursed unless the expenses have been authorized or approved by an order of the board duly made and spread upon the minutes of such board.

(5) When any tax assessor and/or his deputies or assistants attend and successfully complete all qualifications pursuant to the Mississippi Education and Certification Program and receive the certification level of Track II, Evaluator I, they shall receive an additional One Thousand Dollars ($1,000.00) annually beginning the next fiscal year after completion.

(6) When any tax assessor and/or his deputies or assistants attend and successfully complete all qualifications pursuant to the Mississippi Education and Certification Program and receive the certification level of Track II, Evaluator II, they shall receive an additional One Thousand Dollars ($1,000.00) annually beginning the next fiscal year after completion.

(7) When any tax assessor and/or his deputies or assistants attend and successfully complete all qualifications pursuant to the Mississippi Education and Certification Program and receive the certification level of Mississippi Assessment Evaluator (MAE), they shall receive an additional One Thousand Five Hundred Dollars ($1,500.00) annually beginning the next fiscal year after completion.

(8) When any deputy tax assessor successfully completes all qualifications to become a licensed certified residential real estate appraiser under Sections 73-34-1 through 73-34-63, on the recommendation of the tax assessor, the county board of supervisors may pay, in its discretion, an additional amount not to exceed Three Thousand Dollars ($3,000.00) annually to the deputy beginning the next fiscal year after the completion of such qualifications.

(9) When any deputy tax assessor successfully completes all qualifications to become a licensed certified general real estate appraiser under Sections 73-34-1 through 73-34-63, on the recommendation of the tax assessor, the county board of supervisors may pay, in its discretion, an additional amount not to exceed Five Thousand Dollars ($5,000.00) annually to the deputy beginning the next fiscal year after the completion of such qualifications.

(10) The accumulative total of all educational increases authorized under subsections (5), (6), (7), (8) and (9) of this section shall not exceed Eight Thousand Five Hundred Dollars ($8,500.00) and shall be paid out of the common county fund from proceeds of the one (1) mill ad valorem tax as provided in Section 27-39-329.

(11) In order to receive the additional annual payment or payments provided for in subsections (5), (6), (7), (8) and (9) of this section, the tax assessor or deputies or assistants who completed the Mississippi Education and Certification Program and were certified as provided herein shall be personally involved in the conduct, administration and/or supervision of the appraisal of the property of the county and in the maintenance of such appraisal.

SOURCES: Laws, 1980, ch. 505, § 12; Laws, 1984, ch. 470; Laws, 1987, ch. 507, § 2; Laws, 1989, ch. 517, § 6; Laws, 1990, ch. 447, § 1; Laws, 1997, ch. 414, § 1; Laws, 2003, ch. 468, § 4; Laws, 2009, ch. 492, § 28, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — County ad valorem tax levy for payment of bonds or notes and for other authorized purposes, see § 27-39-329.

ATTORNEY GENERAL OPINIONS

State Tax Commission has power to promulgate rules and regulations setting up required education and training programs for appraisers. Barnes, Oct. 28, 1992, A.G. Op. #92-0770.

Under subsection (1), appraisers must be employees of the county, not contract appraisers. Stringer, July 19, 2002, A.G. Op. #02-0352.

A private for-profit company or individual who is not a deputy tax-assessor may not obtain certification pursuant to § 27-3-52. Barber, Oct. 3, 2002, A.G. Op. #02-0374.

A private for-profit company or individual cannot be exempt from § 73-34-5 and practice real estate appraisal without a license as an appraiser under § 27-3-52. Barber, Oct. 3, 2002, A.G. Op. #02-0374.

The board of supervisors must determine, in accordance with fact, whether an individual making a claim for additional compensation pursuant to subsection (3) of this section has satisfied the two conditions precedent which entitle the individual to that compensation. Carroll, Sept. 3, 2004, A.G. Op. 04-0411.

Even though a county board of supervisors faced an extreme financial crisis as a result of Hurricane Katrina, as a matter of law, given the mandatory language Section 27-3-52, there was no authority for the board to exercise discretion in the awarding of compensation increases provided therein. Meadows, Nov. 14, 2005, A.G. Op. 05-0551.

§ 27-3-53. Informational forms.

The Department of Revenue shall prepare and furnish forms for obtaining the information hereinafter provided for, whenever they may deem it necessary

(a) Amount of fire insurance carried on all buildings and on personal property of every description.

(b) All individuals, firms, partnerships and corporations engaged wholly or in part in mercantile, manufacturing or any other business, (except banks and insurance companies) occupation or calling, shall, on demand by the Department of Revenue in writing, furnish a sworn statement of their taxable property, as of January first of each year; and of their assets and liabilities on that date. Any person or concern failing or refusing to furnish the information required within thirty (30) days after written notice so to do from the Department of Revenue shall be guilty of a misdemeanor, and on conviction shall be punished as for a misdemeanor. The information herein provided for shall be confidential, and shall not be given anyone by the Department of Revenue, except to county and municipal tax assessors. And for the illegal disclosure of any information provided for under this section, the injured party shall have a right of action against the Commissioner of Revenue or the assessor, on their or his official bond, for any actual damages sustained.

SOURCES: Codes, Hemingway's 1921 Supp. §§ 7769g, 7769h; 1930, § 7010; 1942, § 9210; Laws, 1918, ch. 228; Laws, 2009, ch. 492, § 29, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Gathering and recording data by tax assessors, see § 27-1-19.

Performance of duties enumerated in this section by Commissioner of Revenue or his designees during annual visits to counties, see § 27-3-51.

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

§ 27-3-55. Repealed.

Repealed by Laws of 2009, ch. 492 § 143, effective from and after July 1, 2010.

§ 27-3-55. [Codes, Hemingway's 1921 Supp. § 7769e; 1930, § 7011; 1942, § 9211; Laws, 1918, ch. 228.]

Editor's Note — Former § 27-3-55 was entitled: Publication of revenue laws.

§ 27-3-57. Deposit of funds; apportionment of collections; bonding.

All funds collected by the Commissioner of Revenue and by the Department of Revenue under the provisions of any law are designated as public funds of the State of Mississippi. All such funds shall be deposited in the State Treasury on the same day in which the funds are collected, in accordance with Section 7-9-21. The State Treasurer shall transfer such monies to municipalities, counties and other special accounts, as provided by law.

The Commissioner of Revenue shall determine amounts due all municipalities, counties and such special funds as provided by law and shall certify to the State Treasurer at the end of each month the amount due each municipality, county or special fund. All tax collections to be apportioned by the Department of Revenue pursuant to Sections 27-65-75, 27-19-159, 27-5-101 and 27-5-103 shall be distributed to the proper sources as provided by law by the State Treasurer upon the certification of apportionment by the Department of Revenue. The State Treasurer shall requisition monies from the Treasury in such amounts as determined and certified by the Department of Revenue. The Department of Finance and Administration shall deliver the warrant to the State Treasurer who shall transfer such funds to each municipality, county or other such special fund by warrant or by electronic funds transfer on the due date.

Officers charged with the responsibility of handling such funds shall be required to provide fidelity bonds in the amount provided by law.

SOURCES: Codes, 1942, § 9213.5; Laws, 1958, ch 582; Laws, 1979, ch. 417, § 2, 1984, ch. 478, § 8; Laws, 2009, ch. 492, § 30, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 1984, ch. 478, § 3, effective July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, effective July 1, 1984, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Deposit of gasoline tax funds collected by the Department of Revenue, see § 27-55-47.

Deposit of funds collected pursuant to tax on lubricating oils, see § 27-57-35.

Deposit of taxes collected on the use of natural gas, compressed gas, and locomotive fuels, see § 27-59-321.

State depositories, see § 27-105-1 et seq.

§ 27-3-58. Department of Revenue authorized to retain portion of proceeds collected from tax levied under authority of local and private law.

For any tax levied and collected under the authority of a local and private law of the State of Mississippi, and collected and paid to the Department of Revenue in the same or similar manner that state sales taxes are collected and paid, the Department of Revenue may retain three percent (3%) of the proceeds of such tax for the purpose of defraying the costs incurred by the Department of Revenue in the collection of the tax.

SOURCES: Laws, 2002, ch. 460, § 1; Laws, 2009, ch. 492, § 31, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure

or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-3-59. Assessors' and collectors' conferences.

It shall be the duty of the Department of Revenue to call an annual conference of the county tax assessors and collectors. The meeting shall be held within the State of Mississippi for the purpose of giving systematic instruction in finding, listing and for the fair and just valuation and assessment of every kind of property subject to taxation under the laws of this state, and as to their practical duty in every step in connection therewith and for instruction in the administration of the Homestead Exemption Law. The conference shall continue not more than five (5) days. It shall be the duty of every county tax assessor and collector to attend and participate in the meeting and if by reason of illness or other unavoidable cause, any tax assessor or collector is unable to attend, he shall require one (1) of his deputies to attend and participate in his place. The Department of Revenue shall prepare, in advance, subjects for discussion by the conference, which shall include the revenue laws of the state, questions relating to matters of assessment of property for taxation and the duties of the tax assessors and collectors, and the Commissioner of Revenue or his designee shall preside as chairman of the conference and the secretary of the conference shall be appointed by the presiding chairman of the conference. The Department of Revenue may call regional conferences during the year for the aforesaid purposes and it shall be the duty of the tax assessors and collectors, or deputies, to attend and participate in these regional conferences and each tax assessor and collector, or his deputy, who attends and participates in these regional conferences shall be reimbursed for his expenses in the same manner as those attending the annual conference.

Each tax assessor and collector attending and participating in the annual or regional conferences in person, or by deputy, shall be entitled to receive as expenses for attending the conferences, travel, meals, lodging and other necessary expenses at the rate provided for in Section 25-3-41, which expenses shall be paid from the county general fund or proceeds from the levy imposed for the maintenance of the reappraisal program in such county.

The Department of Revenue shall have the authority to prescribe forms and to promulgate rules and regulations necessary to implement the provisions of this section.

Forms to be used for payment and reimbursement of expenses and forms of certificate of attendance to be furnished the tax assessors and collectors by the Department of Revenue, requisition and expense vouchers to be made on the State Auditor, the entire expense to be paid from the county general fund. The requisition and voucher shall be supported by a certificate of attendance to the conferences from the Department of Revenue before any payment shall be made. A newly elected county tax assessor or collector who has not qualified and taken office shall be entitled to receive the same payment and reimbursement for expenses in attending the conferences as the retiring county tax assessor or collector is entitled to receive.

SOURCES: Codes, 1930, § 7017; 1942, § 9214; Laws, 1930, ch. 238; Laws, 1950, ch. 274; Laws, 1966, ch. 552, § 1; Laws, 1972, ch. 358, § 1; Laws, 1986, ch. 500, § 6; Laws, 2009, ch. 492, § 32, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Tax assessors and collectors, see § 27-1-1 et seq.

County regulation of minimum requirements for certification of tax assessor as appraiser, see § 27-3-52.

§ 27-3-61. Filing, preservation and disposition of records; digital or electronic preservation; destruction of paper record after digital or electronic preservation.

(1) The Department of Revenue and the Commissioner of Revenue shall file and preserve for the time specified by this section, and as required by any

other laws of this state, complete and full records of their official acts with respect to the laws which the Department of Revenue and/or the Commissioner of Revenue are required to enforce and administer, including, but not limited to, copies or reproductions of such copies of the land and personal assessment rolls, and the assessment rolls of railroads and other persons, corporations and associations required to be assessed by the Commissioner of Revenue as the state assessor of railroad. The Department of Revenue and the Commissioner of Revenue shall preserve, in their office, copies or reproductions of such copies of the land assessment rolls of the counties in this state for ten (10) years, and copies or reproductions of such copies of the personal assessment rolls of the counties in this state for three (3) years, the time to begin on the first day of January of the year in which such assessment rolls were made, the assessment rolls of railroads, persons, corporations or associations assessed by the commissioner for ten (10) years, and all other records, documents and papers for three (3) years. The records and documents required by this subsection to be filed and preserved by the Department of Revenue and the Commissioner of Revenue may be preserved digitally and/or electronically.

(2) When the records, documents, rolls, or reproductions of such rolls, papers and correspondence have been preserved by the Department of Revenue and the Commissioner of Revenue for the period of time required by subsection (1) of this section, all of the records, or such parts thereof as may be considered useless, may be disposed of in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History. Nothing in this subsection shall prevent the Department of Revenue and/or the Commissioner of Revenue from destroying the paper copy of any record or document after it has been preserved digitally or electronically.

SOURCES: Codes, 1942, §§ 9216, 9217; Laws, 1934, ch. 158; Laws, 1981, ch. 501, § 20; Laws, 1984, ch. 422, § 1; Laws, 2009, ch. 492, § 33, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Archives and Records Management Law, generally, see § 25-59-1 et seq.

For requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

JUDICIAL DECISIONS

1. In general.

Destruction by the tax commission of the original state income tax returns does not preclude a deficiency assessment by reason of a change in net income made by the Federal Internal Revenue Service. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

§ 27-3-63. Audit of books outside of state to determine tax liability.

When, in the judgment of the Department of Revenue, an audit, examination or inspection of the books, records, invoices, papers, memoranda or other data appears to be required or necessary to determine the assessment of a tax, or to establish a tax liability, or to verify a payment of a tax, under the income, any privilege, sales, and excise tax laws of any kind of this state, of a taxpayer doing business both within and without the state and maintaining his principal place of business outside the state; such audit, or examination, or inspection may be made at the principal place of business outside the state to the same extent and same effect as audits, examinations, or inspections are made of books, records, invoices, papers, memoranda or other data located in this state.

The Department of Revenue, when directly charged with the duty of assessing and collecting any tax under any law which requires a taxpayer to keep adequate books, records, papers, invoices, memoranda or other data, at a place in this state, reflecting his liability for any tax due the state, and which taxpayer conducts his business both within and without Mississippi, and maintains his principal place of business outside this state at which his books, records, etc., are located, may elect to audit, examine or inspect all books, records, papers, invoices, memoranda or other data reflecting upon the Mississippi tax assessment and tax liability at the principal place of business of the taxpayer, rather than require the taxpayer to transport all of his books, records, papers, invoices, memoranda and other data to some place in this state.

SOURCES: Codes, 1942, § 9218; Laws, 1942, ch. 126; Laws, 2009, ch. 492, § 34, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the second paragraph was corrected by substituting "...are located, may elect to audit, examine or inspect all books..." for "are located; may elect to audit, examine or inspect all books..."

§ 27-3-65. Audit of books outside state to determine tax liability; designation of agents to make audit.

When the Department of Revenue in the course of directly administering any of the tax laws enumerated in Section 27-3-63 shall elect to audit, examine or inspect the books, records, papers, invoices, memoranda or other data of a taxpayer at his principal place of business outside this state, it shall designate, in writing, the agent or agents, employee or employees, to make the audit, examination or inspection at the principal place of business of the taxpayer, and shall state the kind of tax for which the audit, examination or inspection is thereby made, but for an inspection in regard to those taxes administered by the Department of Revenue there shall be no charge of any kind made against the taxpayer for the expenses of such inspection.

SOURCES: Codes, 1942, § 9219; Laws, 1942, ch. 126; Laws, 1958, ch. 553; Laws, 2009, ch. 492, § 35, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-3-67. State taxing agency to have access to confidential information of other state taxing agencies.

(1) Any agency, instrumentality or department of the State of Mississippi, which is charged by law with the collection of any taxes or fees whatsoever, shall be entitled, under the conditions hereinafter set forth, to have access to and obtain information from the books and records of any other agency, instrumentality or department of the state which is also charged by law with the collection of any taxes or fees whatsoever, if the purpose for which the information is sought or desired relates to and is connected with the statutory or constitutional duties of the agency, instrumentality or department desiring or seeking same.

(2) In order to be entitled to have access to and obtain information from the books and records of such other agency, instrumentality or department, the head of the agency, instrumentality or department desiring and seeking same shall make request therefor, in writing, to the Governor of the State of Mississippi, which request shall specify in detail the information sought and desired, and shall contain a full statement of the purpose for which such information is sought. If the Governor be of the opinion that the request relates to and is connected with the statutory or constitutional duties of the agency, instrumentality or department seeking same, and that such request is proper and reasonable and should be granted, then he shall transmit such request to the head of the agency, instrumentality or department from which the information is desired, together with his direction, in writing, that the information requested be furnished or that access to the books and records be given.

(3) The Governor shall have full and complete discretion to determine whether any request submitted to him shall be approved or disapproved, and his decision thereon shall be final; and he shall have the authority to approve same in part and disapprove same in part, and the authority to prescribe the manner in which the requested information shall be furnished and the terms and conditions under which access to the books and records shall be had.

(4) The terms and provisions of this section shall apply only to such books and records as are by statute or by their nature confidential and privileged, and shall not apply to such books and records as are declared by law to be, or are by their nature, public records, or records which are not confidential and privileged, and such records which are public records or not declared by law to be, or are not by their nature, confidential and privileged, may be inspected and information obtained therefrom as a matter of course without following the procedure herein prescribed.

SOURCES: Codes, 1942, § 9217.5; Laws, 1946, ch. 232, §§ 1-4.

Cross References — Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

§ 27-3-69. Recovery of interest and penalties; apportionment.

All penalties or interest and all penalties and interest imposed or authorized to be imposed by any state law or municipal ordinance, accrued or which may accrue hereafter, shall be recoverable by the officer authorized to sue for or collect the tax in respect to which said penalties or interest are imposed or authorized to be collected as a part of the tax with respect to which they are imposed or authorized to be collected, and all such penalties and interest shall be apportioned as provided for the apportionment of the tax on which such penalties or interest are collected.

SOURCES: Codes, 1942, § 9186.5; Laws, 1954, ch. 388, § 1.

Cross References — Prosecutions and actions by Commissioner of Revenue for defaults and violations under tax laws, see § 27-3-33.

Apportionment of gasoline taxes, see § 27-5-101.

RESEARCH REFERENCES

ALR. Debts arising from tax penalties as exceptions to bankruptcy discharge under § 523(a)(7)(A) and (B) of Bankruptcy Code of 1978 (11 U.S.C.S. § 523(a)(7)(A) and (B)). 157 A.L.R. Fed. 313.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 738 et seq. (penalties, interest and costs).

CJS. 85 C.J.S., Taxation § 1851 et seq.

§ 27-3-71. Transfer of other powers and duties.

(1) Any other duties and powers heretofore vested in the office of the State Tax Collector not specifically transferred to the State Tax Commission or specifically repealed by Chapter 588, Laws of 1962, are transferred to and vested in the State Tax Commission, and any and all fees, commissions or other remuneration heretofore authorized to be retained by the state tax collector out of any moneys collected by said office shall be paid into the State Treasury or to the proper officer of the political subdivision entitled thereto, as the case may be.

(2) The powers formerly vested in the office of the State Tax Collector which have been transferred to and vested in the State Tax Commission shall be deemed to be cumulative and supplemental to all other powers conferred by law upon said State Tax Commission and the members thereof and shall not be construed so as to supersede, repeal or annul any other power or authority conferred upon the State Tax Commission or any member thereof by virtue of any other statute.

SOURCES: Codes, 1942, §§ 9213-18, 9213-19; Laws, 1962, ch. 588, §§ 27, 28, eff from and after January 1, 1964.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean "Department of Revenue."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in (1) was corrected by substituting "Chapter 588, Laws of 1962" for "this act."

Cross References — Suspension of members of Department of Revenue for failure to render accounts and settle accounts, see § 27-3-45.

§ 27-3-73. Secrecy of tax returns; release of certain information about individuals who are delinquent in payment of child support or under investigation for fraud or abuse of state or federal program.

(1) Except in accordance with proper judicial order or as otherwise provided in this section or as authorized in Section 27-4-3, it shall be unlawful for the Commissioner of Revenue, or any deputy, agent, clerk or other officer or employee of the Department of Revenue, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required on any taxes collected by reports received by the Department of Revenue. This provision relates to all taxes collected by the Department of Revenue and not referred to in Sections 27-7-83, 27-13-57 and 27-65-81, requiring confidentiality of income tax, franchise tax and sales tax returns. All system edits, thresholds, and any other automated system calculations used by the Department of Revenue in the processing of returns or statistics or used to determine the correct tax due for all taxes administered by the department shall be considered confidential information and may not be divulged or made known. Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General, or any other attorney representing the state, of the report or return of any taxpayer who shall bring action to set aside the tax thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed. Additionally, nothing in this section shall prohibit the Commissioner of Revenue from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16.

The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

However, information relating to possible tax liability to other states or the federal government may be furnished to the revenue departments of those states or the federal government when the states or federal government grant a like comity to Mississippi.

(2) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department of Revenue, and the same prohibitions against disclosure which apply to the Department of Revenue shall apply to the State Auditor and his office.

(3) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(4) Information required by the University Research Center to prepare the analyses required by Sections 57-13-101 through 57-13-109 shall be furnished to the University Research Center upon request. It shall be unlawful for any officer or employee of the University Research Center to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

(5) Information required by the Mississippi Development Authority to prepare the reports required by Section 57-1-12.2 shall be furnished to the Mississippi Development Authority upon request. It shall be unlawful for any officer or employee of the Mississippi Development Authority to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the Mississippi Development Authority from the Department of Revenue other than as may be required by Section 57-1-12.2 in a report prepared pursuant to Section 57-1-12.2.

(6) Information necessary to comply with Chapter 13, Title 85 may be furnished to financial institutions. It shall be unlawful for any officer or employee of the financial institution to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the financial institution from the Department of Revenue other than as may be authorized by Chapter 13, Title 85.

(7) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than six (6) months in the county jail, or both.

(8) The Commissioner of Revenue and the Department of Revenue are authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the name, address, social security number, amount of income, amount of sales tax, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

SOURCES: Laws, 1975, ch. 516, § 1; Laws, 1986, ch. 389; Laws, 1988, ch. 349, § 2; Laws, 2009, ch. 492, § 36; Laws, 2010, ch. 323, § 1; Laws, 2010, ch. 385, § 1; Laws, 2010, ch. 388, § 2; Laws, 2010, ch. 481, § 1; Laws, 2014, ch. 517, § 8; Laws, 2017, ch. 407, § 5, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 1 of ch. 481, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 1 of ch. 323, Laws of 2010, effective July 1, 2010 (approved March 15, 2010), Section 2 of ch. 388, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), and Section 1 of ch. 385, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 481, Laws of 2010, which contains language that specifically provides that it supersedes § 27-3-73 as amended by Laws of 2010, chs. 323, 385 and 388.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the internal statutory references. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Amendment Notes — The 2017 amendment added (6) and redesignated the remaining subsections accordingly.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information. 1 A.L.R.4th 959.

§ 27-3-75. Repealed.

Repealed by Laws of 2009, ch. 492, § 143, effective from and after July 1, 2010.

§ 27-3-75. [Laws, 1980, ch 505, § 13; Laws, 1984, ch. 488, § 176, eff from and after July 1, 1984.]

Editor's Note — Former § 27-3-75 authorized the state tax commission to contract for aerial photography in order to effectuate statewide reappraisal of property.

§ 27-3-77. Certain individual tax records exempt from public access requirement.

Records in the possession of a public body, as defined by paragraph (a) of Section 25-61-3 which would disclose information about a person's individual tax payment or status, shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

SOURCES: Laws, 1983, ch. 424, § 14, eff from and after July 1, 1983.

Editor's Note — "The Mississippi Public Records Act of 1983", referred to in this section, is Laws of 1983, ch. 424, §§ 1-9, which appears as § 25-61-1 et seq.

ATTORNEY GENERAL OPINIONS

Gross salaries of state employees are considered to be matter of public record within meaning of Section 25-61-5(1) but net salaries and tax exemption status of state employees are exempt from public access under provisions of Section 27-3-77. Stringer, March 23, 1994, A.G. Op. #93-0900.

No state law would prevent the provision by a county tax collector/assessor of information as to the amount due or paid by an individual for a motor vehicle privilege license to the municipalities. Ray, Dec. 16, 2005, A.G. Op. 05-0560.

§ 27-3-79. Penalties for tax evasion; statute of limitations for tax evasion.

(1) The State Tax Commission shall develop and implement a tax amnesty program in accordance with the provisions of this section. The program shall begin on September 1, 2004, and end on December 31, 2004. The program shall apply to all taxes that are required to be collected by the State Tax Commission or commissioner and that were first due and payable for the year 1999 and after. Tax amnesty shall be available to any individuals or corpora-

tions who are liable for those taxes and who have failed to pay all or any portion of their taxes, failed to file returns or filed inaccurate returns; however, tax amnesty shall not be available to individuals or corporations subject to tax-related criminal investigations or prosecution, or where the taxes have been previously assessed by the commission, or to estimated tax payments required to be made under Section 27-7-319. All civil and criminal penalties for nonpayment of taxes, including the penalties set forth in subsection (2) of this section, shall be waived for any eligible individual or corporation who, during the tax amnesty period, makes total payment of the taxes due. The State Tax Commission is authorized to do all things necessary to carry out the tax amnesty programs that are not inconsistent with this section.

(2) Any person eligible for the tax amnesty program and who fails to make total payment of the taxes due during the tax amnesty period, or any person who willfully attempts in any manner to evade or defeat any tax imposed by the State Tax Commission or the Department of Revenue, or assists in the evading of that tax or the payment thereof, including violations determined under Section 27-3-80, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than One Hundred Thousand Dollars ($100,000.00) and, in the case of a corporation, not more than Five Hundred Thousand Dollars ($500,000.00), or imprisoned not more than five (5) years, or both.

(3) Any prosecutions for tax evasion as described in this section shall be begun within six (6) years next after the statutory due date for the taxes in issue.

SOURCES: Laws, 1986, ch. 500, § 5; Laws, 1992, ch. 401, § 1; Laws, 2004, ch. 352, § 2; Laws, 2004, ch. 595, § 14; Laws, 2009, ch. 492, § 37, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 2 of ch. 352 Laws of 2004, effective from and after July 1, 2004 (approved April 19, 2004), amended this section. Section 14 of ch. 595, Laws of 2004, effective from and after July 1, 2004 (approved May 27, 2004), also amended this section. As set out above, this section reflects the language of Section 14 of ch. 595, Laws of 2004, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Section 27-3-4 provides that the term "State Tax Commission" shall mean "Department of Revenue."

Laws of 2004, ch. 352, § 3, effective July 1, 2004, provides:

"SECTION 3. The Attorney General is authorized to promulgate any necessary rules and regulations to carry out the provisions of this act."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure

or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Substantial evidence existed to support defendant's conviction for tax evasion, despite defendant's contention that he was disinterested in his candy-making business. Defendant had established a wide network of vendors, and his daughters-in-law testified that defendant would beat them if he felt that they did not bring home enough in proceeds. King v. State, 897 So. 2d 981 (Miss. Ct. App. 2004), writ of certiorari denied by 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

Convictions and sentences for attempting to evade payment of personal income tax were affirmed because (1) there was sufficient evidence, in the form of testimony from three Mississippi State Tax Commission employees, for the jury to find that defendant committed the crime, thus, the trial court did not commit error by denying defendant's motion for directed verdict; (2) during the jury instruction, the trial court properly denied a jury instruction that improperly commented on the evidence and properly denied two instructions regarding willfulness as there was no evidence to support them; and (3) it was not an abuse of discretion for the trial judge to impose on defendant the maximum sentence of five years for the felony counts because the sentence imposed was within the statutory limits. Salman v. State, — So. 2d —, 2004 Miss. App. LEXIS 72 (Miss. Ct. App. Feb. 3, 2004), writ of certiorari denied by 882 So. 2d 234, 2004 Miss. LEXIS 993 (Miss. Aug. 5, 2004).

Section 27-3-79(2), which declares unlawful wilful attempts "to evade or defeat any tax imposed by the State Tax Commission" [emphasis added], was enforceable against a defendant who allegedly wilfully evaded the payment of retail sales tax, even though the State Tax Commission has no power to impose or levy a tax and "imposed" does not mean the same thing as "collect." No reasonable person could read § 27-3-79(2) in conjunction with the sales tax statutes and those creating and empowering the Commission (and, as well, the general title in the Mississippi Code regarding taxation) and not know that post-July 1, 1986, wilful attempts to evade collection and payment of the required sales taxes was unlawful and rendered the defendant amenable to prosecution therefor. State v. Burnham, 546 So. 2d 690 (Miss. 1989).

RESEARCH REFERENCES

ALR. Defamation: Actionability of accusation or imputation of tax evasion. 32 A.L.R.3d 1427.

Constitutional provision against imprisonment for debt as applicable to nonpayment of tax. 48 A.L.R.3d 1324.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 712 et seq. (obligation to pay and manner of payment).

13 Am. Jur. Trials, Defending Tax Evasion Cases §§ 1-74.

CJS. 85 C.J.S., Taxation § 1228 et seq.

Law Reviews. 1989 Mississippi Supreme Court Review: Statutory Interpretation. 59 Miss. L. J. 876, Winter, 1989.

§ 27-3-80. Creation of task force to facilitate investigation and prosecution of drug trafficking kingpins regarding tax evasion and other crimes; reporting and determination of possible violations of law; employment of criminal investigator; confidentiality of information; definitions.

(1) The Attorney General, the Department of Revenue, the Department of Public Safety and the Bureau of Narcotics shall create a task force to facilitate the transfer of information from law enforcement agencies to the Attorney General indicating that an individual is a drug trafficking kingpin, is laundering money received from drug trafficking and is likely evading the income reporting requirements of state law. The Attorney General shall examine all relevant information to determine the probability that such violations of law exist. The Attorney General may enlist the aid of any other law enforcement agency in the state in an investigation under this section. If the Attorney General determines that tax evasion is probably occurring, he shall forward the information to the Department of Revenue with a request that the Department of Revenue perform a criminal tax evasion investigation. The Department of Revenue shall report its preliminary findings to the Attorney General within one hundred twenty (120) days after receiving the information.

(2) If the report of the Department of Revenue to the Attorney General indicates that the individual who is the subject of the investigation has failed to report income as required by law and such failure constitutes a criminal violation, the Attorney General is authorized to prosecute the individual for criminal tax violations. The Attorney General is authorized to file an ex parte petition for release of tax information to the Bureau of Narcotics for presentation to appropriate state or federal prosecutors for the prosecution of federal tax offenses or other applicable offenses.

(3) Subject to available funding, the Department of Revenue is authorized to employ a criminal investigator to carry out the investigative and reporting requirements of this section.

(4) Any information received by the Attorney General, the Department of Revenue, the Bureau of Narcotics or other law enforcement agency shall be confidential except to the extent that disclosure is necessary to pursue tax evasion or other criminal tax charges or unless a proper judicial order is obtained. Information received under this section is exempt from the Mississippi Public Records Act of 1983.

(5) As used in this section:

(a) "Drug trafficking kingpin" means an individual who directs or participates in directing the illegal activities of a kingpin organization.

(b) "Kingpin organization" means a group of individuals, operating as a group either formally or informally, who sell, transport, manufacture and/or deliver controlled substances in felony violation of the Uniform Controlled Substances Law. To qualify as a kingpin organization, the group would either have to distribute major quantities of controlled substances, or their trafficking activities would have to occur in or affect more than one (1) circuit court district.

SOURCES: Laws, 2004, ch. 352, § 1; Laws, 2009, ch. 492, § 38, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2004, ch. 352, § 3, effective July 1, 2004, provides:

"SECTION 3. The Attorney General is authorized to promulgate any necessary rules and regulations to carry out the provisions of this act."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

Uniform Controlled Substances Law, see § 41-29-101 et seq.

§ 27-3-81. Required payment of taxes, when liability exceeds certain sum, by wire transfer or other means making funds immediately available; penalty and interest.

The Department of Revenue may require, consistent with the cash management policies of the State Treasurer, that any person owing Twenty Thousand Dollars ($20,000.00) or more in connection with any return, report or other document to be filed with the Department of Revenue shall pay any such tax liability to the state no later than the date such payment is required by law to be made in funds which are immediately available to the state on the date of payment. Payment in immediately available funds may be made by wire transfers of funds through the Federal Reserve System or by any other means established by the Department of Revenue, with the approval of the State Treasurer, which ensures availability of such funds to the state on the date of payment. Evidence of such payment shall be furnished to the Department of Revenue on or before the due date of the tax as established by law. Failure to timely make such payment in immediately available funds or failure to provide such evidence of payment in a timely manner shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments. If payment is timely made in other than immediately available funds, penalty and interest shall be added to the amount of tax due from the due date of the tax payment to the date that the funds for the tax payment become available to the state.

SOURCES: Laws, 1993, ch. 364, § 1; Laws, 2009, ch. 492, § 39, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 721 (medium of payment).

CJS. 85 C.J.S., Taxation §§ 1160-1162.

§ 27-3-83. Regulation of manner and method of filing of tax returns and other tax documents and information submitted to Department of Revenue; electronic filing mandate for certain taxpayers; exception; alternative forms of signature; effect of electronic or paper reproduction of form or document; penalties for violations of regulations; signing document filed with department is swearing under oath that all information provided is true and correct; release of information to authorized individuals.

(1) The Commissioner of Revenue may specify by rule or regulation the manner and method, either manually or electronically, by which tax returns, supporting schedules, information returns, applications for permits, licenses or titles, powers of attorney, review board appeal petitions, and other documents and information may be filed with the Department of Revenue. The commissioner may require certain taxpayers to submit any or all tax returns, schedules or other documents and information electronically; however, the commissioner shall not require the submission of returns, schedules or other documents and information electronically by taxpayers that do not have the capability to make the submissions electronically.

(2) The Commissioner of Revenue may specify by rule or regulation alternative forms of electronic signature that may be allowed or required on tax returns and other documents. Such an electronic signature shall have the same legal effect as that of a manual signature.

(3) An electronic or paper reproduction of a form or document, or the reproduction of the information placed on computer storage devices by electronic means, shall be deemed to be an original of the form or document for all purposes and is admissible in evidence without further foundation in all courts and administrative hearings if the following certification by the Commissioner of Revenue, along with his official seal, is affixed to the reproduction:

The Commissioner of Revenue, official custodian of all records of the Department of Revenue, hereby certifies this document is a true reproduction of the information contained in the official records of this agency.

(4) If a person fails to comply with the rules and regulations promulgated by the commissioner under the provisions of subsection (1) or (2) of this section; fails to comply with any electronic filing mandate; fails to complete any return, supporting schedule, information return or other document or fails to remit any required schedule or additional information, the commissioner may impose a penalty of Twenty-five Dollars ($25.00) for the first instance of noncompliance and Five Hundred Dollars ($500.00) for each additional instance of noncompliance. Any penalty imposed under this section shall be collected in the same manner as that set forth for the collection of penalties under the Mississippi Sales Tax Law, being Section 27-65-1 et seq.

(5) By manually signing or affixing an electronic signature to a document that may be filed with the department, the person signing the document or affixing the electronic signature to the document is swearing under oath that

all information contained in the document is true and correct and that he or she has the same authority to sign the document or affix the electronic signature to the document as the person filing the document or as the duly authorized representative of the person or entity for whom the document is being filed. Should the person signing or affixing an electronic signature to a document filed with the Department of Revenue knowingly submit information in the document that is false or sign or affix an electronic signature to the document on the behalf of another person or entity without the authority to do so, he or she shall be guilty of perjury and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

(6) Notwithstanding the confidentiality of the information and documents in its possession, the Department of Revenue may release any information or a copy of any document in its possession and custody to any person designated to receive the information or document in a power of attorney or other document authorizing the release of the information or document which has been properly executed by the person or the duly authorized representative of the entity to whom the information or document pertains and where the authorization has not expired, been revoked, cancelled or otherwise rendered ineffective by death or other circumstances. The Department of Revenue may require the prepayment of the cost of the production of such information or records. The Department of Revenue retains the right to deny the release of information and documents for good cause, including, but not limited to, interference with its operation or with an ongoing tax, criminal, permit or regulatory investigation or prosecution, and the possible violation of any federal law, state law or exchange agreement with the Internal Revenue Service, other federal agency, another state agency or the revenue department of another state.

SOURCES: Laws, 1995, ch. 365, § 1; Laws, 2009, ch. 492, § 40; Laws, 2010, ch. 323, § 2; Laws, 2012, ch. 566, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected two typographical errors in subsection (4). The word "subsections" was changed to "subsection" following "promulgated by the commission under the provisions of" in the first sentence. The word "Sections" was changed to "Section" preceding "27-65-1 et seq" in the last sentence. The Joint Committee ratified the correction at its May 31, 2006, meeting.

Editor's Note — Laws of 2012, ch. 566, § 10, provides:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage [May 23, 2012], and the remaining sections of this act shall take effect and be in force from and after July 1, 2012."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi

State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

JUDICIAL DECISIONS

1. Notice sufficient.

Because the evidence in the record supported the chancery court's determination that the Mississippi Department of Revenue (MDOR) complied with the statute's notice requirements for assessments on unfiled tax returns, the taxpayer did not lack proper notice of the assessments; the MDOR provided a copy of electronic records to establish that it issued one tax assessment by regular mail, and it provided proof that it issued another assessment by regular mail. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

There was no abuse of discretion in the chancery court's finding that the Mississippi Department of Revenue (MDOR) provided sufficient notice to the taxpayer of his tax assessments because the MDOR presented sufficient proof of the taxpayer's receipt of the tax assessments; the MDOR presented the chancellor with a copy of electronically recorded information documenting the taxpayer's receipt of the certified-mail notices. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation, § 494 et seq.

CJS. 55 C.J.S., Mandamus § 167.
85 C.J.S., Taxation §§ 1429-1432.

CHAPTER 4

Board of Tax Appeals

Sec.

27-4-1. Board of Tax Appeals; appointment, qualifications, terms of office, oath, bond, removal from office, and compensation of members.
27-4-3. Powers, duties and jurisdiction of the Board of Tax Appeals.
27-4-5. Executive director of the Board of Tax Appeals; qualifications, powers, duties and responsibilities; removal from office.
27-4-7. Board of Tax Appeals seal.
27-4-9. Meetings; quorum.

§ 27-4-1. Board of Tax Appeals; appointment, qualifications, terms of office, oath, bond, removal from office, and compensation of members.

(1) The Board of Tax Appeals is established as an independent agency which shall not in any way be subject to the supervision or control of the Department of Revenue.

(2) The Board of Tax Appeals shall consist of three (3) members: a chairman and two (2) associate members. Except as provided in subsection (5) of this section, the chairman and associate members shall be appointed by the Governor with the advice and consent of the Senate. Each member of the board shall be a qualified elector, shall have at least a bachelor's degree from an accredited college or university, and shall possess a special knowledge of taxation and revenue in the State of Mississippi. The members of the Board of Tax Appeals, while holding office, shall not engage in any other occupation or business interfering with or inconsistent with their official duties on the board.

(3) The initial term of the Chairman of the Board of Tax Appeals shall begin on July 1, 2010, and expire on June 30, 2016. The initial term of one (1) associate member of the board shall expire June 30, 2012. The initial term of the other associate member shall expire June 30, 2014. Upon the expiration of the initial terms, the term of office of each member shall be for six (6) years, or until his successor is appointed and qualified. The Governor shall include in his appointment of the chairman and associate members the expiration date of each appointment. Vacancies shall be filled by the Governor for the unexpired portion of the term in which the vacancy occurs.

(4) No person appointed by the Governor to the Board of Tax Appeals shall be eligible to take office unless his name shall have been submitted to the Mississippi Senate for its advice and consent at least thirty (30) days prior to the scheduled adjournment of the regular session of the Legislature being held in the calendar year in which the term of the office of the incumbent shall expire; however, if for any reason an appointment is not given the advice and consent of the Mississippi Senate prior to the adjournment of such regular session, the Governor may submit another appointment at any time to the Mississippi Senate for its advice and consent at a regular or extraordinary session of the Legislature. The foregoing prohibition shall not apply when a vacancy shall occur by death or resignation of the incumbent.

(5) On July 1, 2010, the Associate Commissioner of the State Tax Commission whose appointment as associate commissioner has an expiration date of June 30, 2012, shall fill the position of the associate member of the Board of Tax Appeals whose term expires on June 30, 2012. On July 1, 2010, the Associate Commissioner of the State Tax Commission whose appointment as associate commissioner has an expiration date of June 30, 2014, shall fill the position of the associate member of the Board of Tax Appeals whose term expires on June 30, 2014. This change of positions from an Associate Commissioner of the State Tax Commission to an associate member of the Board of Tax Appeals shall be treated as a continuation of the same appointment without the need for an additional appointment by the Governor or the advice and consent of the Senate.

(6) Each member of the Board of Tax Appeals shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath of office prescribed by the Constitution and shall file the oath in the Office of the Secretary of State, and each member, including the chairman, shall execute a bond in some surety company authorized to do business in the state, to be approved by the Governor, and filed in the Office of the Secretary of State in the penal sum of Fifty Thousand Dollars ($50,000.00), conditioned for the faithful and impartial discharge of the duties of his office. The premium on the bonds shall be paid as provided by law out of funds appropriated to the Board of Tax Appeals.

(7) The members of the Board of Tax Appeals are not subject to removal from office other than by impeachment or by removal from office as provided for under Section 25-5-1, except that in addition to such impeachment and removal, a member of the Board of Tax Appeals may also be removed from office for a criminal conviction for violating the Internal Revenue Code.

(8) It is the duty of the Department of Finance and Administration to provide suitable and adequate quarters and equipment for the Board of Tax Appeals, for the executive director and employees of the board and for filing their records, books and papers.

(9) The members of the Board of Tax Appeals shall receive an annual salary fixed by the State Personnel Board. The actual traveling expenses of the board members, the executive director of the board and the employees of the board incurred in the performance of their official duties shall be allowed, and such salaries and expenses shall be payable out of funds appropriated for the expenses of the Board of Tax Appeals.

SOURCES: Laws, 2009, ch. 492, § 1, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit,

approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-4-3. Powers, duties and jurisdiction of the Board of Tax Appeals.

(1) The Board of Tax Appeals shall have the following powers and duties:

(a) To adopt, amend or repeal those rules or regulations necessary to implement the duties assigned to the board.

(b) To have jurisdiction over all administrative appeals to the board from decisions of the review board and administrative hearing officers of the Department of Revenue under Sections 27-77-5, 27-77-9, 27-77-11 and 27-77-12, to arrange the time and place of the hearing on any such appeal, and where required, to arrange for any evidence presented to the board at such hearing to be transcribed or otherwise preserved for purposes of making a record of the hearing.

(c) To have jurisdiction over all administrative appeals regarding certain decisions and actions by the Department of Revenue under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., and under the Mississippi Native Wine Law of 1976, Section 67-5-1 et seq., as provided for under Section 67-1-72, to arrange the time and place of the hearing on any such appeal and to arrange for any evidence presented to the board at such hearing to be transcribed or otherwise preserved for purposes of making a record of the hearing.

(d) To have jurisdiction over all administrative appeals under Sections 27-33-37 and 27-33-41 to the board from decisions of the Department of Revenue to deny an objection of a board of supervisors to the rejection by the Department of Revenue of an application for homestead exemption and to arrange the time and place of the hearing on any such appeal.

(e) To have jurisdiction over all administrative appeals under Section 27-35-113 to the board from the decision of the Department of Revenue regarding its examination of the recapitulations of the assessment rolls of a county and to arrange the time and place of the hearing on any such appeal.

(f) To have jurisdiction to hear any objection to an assessment by the Department of Revenue pursuant to Section 27-35-311, 27-35-517 or 27-35-703 and to arrange the time and place of the hearing on any such objection.

(g) To perform all other duties which are now or may hereafter be imposed upon the board by law.

(h) To obtain, review, receive into evidence and/or otherwise examine and consider applications, returns, reports and any particulars set forth or disclosed in any application report or return required on any taxes collected by reports received by the Department of Revenue and any other documents and information received, generated and/or maintained by the Department of Revenue. The authority of the board under this paragraph is not barred or otherwise restricted by the confidentiality of such documents and information under Sections 27-3-73, 27-7-83, 27-13-57 and/or 27-65-81, and the disclosure of such documents and information to the board shall be an exception to the prohibition on disclosure of such documents and information contained in Sections 27-3-73, 27-7-83, 27-13-57 and/or 27-65-81.

(2) Each member of the board is empowered to administer and certify oaths.

(3) Each member of the board is empowered to perform all other duties which are now or may hereafter be imposed on him by law.

SOURCES: Laws, 2009, ch. 492, § 2; Laws, 2010, ch. 388, § 1, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-4-5. Executive director of the Board of Tax Appeals; qualifications, powers, duties and responsibilities; removal from office.

(1) Except as provided in subsection (7) of this section, the Chairman of the Board of Tax Appeals shall appoint an executive director of the board who will serve at the will and pleasure of the chairman, but the executive director is subject to removal from office as provided for under Section 25-5-1; however, the executive director may also be removed from office for a criminal conviction for violating the Internal Revenue Code.

(2) The executive director shall be admitted to practice law in this state and have a familiarity with the tax appeals process sufficient to fulfill the duties of the office of executive director. The salary of the executive director

shall be set by the State Personnel Board. The executive director shall devote full time to the duties assigned to him by the board and/or its chairman.

(3) The Executive Director of the Board of Tax Appeals shall keep the minutes of the board and make a record of all official orders, findings and acts of the board. The executive director shall file and preserve as a record, all papers, exhibits and documents, filed with the board in any proceeding before it, and shall perform such other duties as the chairman of the board may direct. He shall certify copies of such records as are in his custody, and such copies, when so certified, shall be accepted in all matters equally and in like manner as the original.

(4) The Executive Director of the Board of Tax Appeals shall direct and supervise the preparation of any record of a hearing before the Board of Tax Appeals to be filed in any court of the state.

(5) The Executive Director of the Board of Tax Appeals is hereby empowered to employ clerical personnel, stenographers and such other assistants and/or attorneys as he may deem necessary for the proper discharge of his duties and the duties of the Board of Tax Appeals.

(6) The Executive Director of the Board of Tax Appeals shall also have the following powers:

(a) To supervise and direct all administrative and technical activities of the Board of Tax Appeals;

(b) To make, execute and effectuate any and all agreements or contracts, including contracts for the purchase of goods and services, as are necessary;

(c) To enter into long-term or multiyear leases of real property with other state agencies;

(d) To perform such other acts he deems necessary to carry out the duties assigned to him by the Chairman of the Board of Tax Appeals or imposed on him by law.

(7) On July 1, 2010, the person who immediately prior to that date held the position of Secretary of the State Tax Commission shall fill the position of the Executive Director of the Board of Tax Appeals. This change of positions from the Secretary of the State Tax Commission to the Executive Director of the Board of Tax Appeals shall be treated as a continuation of the same position with the position being transferred from the State Tax Commission to the Board of Tax Appeals with the effective date of such transfer being July 1, 2010. Upon assuming the position of the Executive Director of the Board of Tax Appeals on July 1, 2010, this person, who had previously been Secretary of the State Tax Commission, shall serve in the position of Executive Director of the Board of Tax Appeals at the will and pleasure of the Chairman of the Board of Tax Appeals and will be subject to removal from that position as set out in subsection (1) of this section.

(8) Since the Board of Tax Appeals is the successor to the three-member State Tax Commission in regard to administrative appeals, the Secretary of the State Tax Commission shall take with him, when he assumes the position of the Executive Director of the Board of Tax Appeals, all minutes and orders

of the three-member State Tax Commission and all papers, exhibits and documents filed with the three-member State Tax Commission that had been previously preserved as a record of that body by the Secretary of the State Tax Commission and shall continue to preserve these minutes, orders and records of the three-member State Tax Commission in accordance with any record retention schedule established for such records. He shall continue to perform any other duties and responsibilities of the Secretary of the State Tax Commission in regard to these minutes, orders and records, including, but not limited to, certifying copies of such records, and such copies, when so certified, shall be accepted in all matters equally and in like manner as the original.

SOURCES: Laws, 2009, ch. 492, § 3, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-4-7. Board of Tax Appeals seal.

The Board of Tax Appeals shall have a seal which shall be in the form of a circle with the image of an eagle in the center and around the margin the words: "Mississippi Board of Tax Appeals," and under the image of the eagle the word: "Official." The seal, in the discretion of the executive director of the board, may be of a raised or engraved design or printed. The Executive Director of the Board of Tax Appeals shall affix the seal prescribed herein to every document where it is required by law, and to every certificate and other official paper executed by him or the board where necessary or proper. All documents authenticated with the seal and signed by the executive director shall be received as evidence in all courts, investigations and proceedings authorized by law, and may be recorded in the same manner and with like effect as a deed. All copies of papers in the office of the board, certified by him and authenticated by the seal, shall be accepted in all matters equally and in like manner as the original.

SOURCES: Laws, 2009, ch. 492, § 4, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-4-9. Meetings; quorum.

The Board of Tax Appeals shall meet at least one (1) day in each month, or more frequently if called by the chairman of the board, at such place as may be designated by the chairman, for the purpose of hearing and considering matters necessary to facilitate the performance of its duties. Any two (2) members of the board shall constitute a quorum, and if two (2) members be unavoidably absent, such fact shall be noted on the minutes and all matters for consideration shall be continued to the next meeting.

SOURCES: Laws, 2009, ch. 492, § 5, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

CHAPTER 5

Motor Vehicle Comptroller

General Provisions. [Repealed]
Inspection Stations 27-5-71
Apportionment of Taxes 27-5-101
Transfer of Functions to State Tax Commission 27-5-151

GENERAL PROVISIONS
[REPEALED]

Sec.
27-5-1 through 27-5-21. Repealed.
27-5-22. Repealed.
27-5-23 through 27-5-35. Repealed.

§§ 27-5-1 through 27-5-21. Repealed.

Repealed by Laws of 1980, ch. 561, § 42, eff from and after July 2, 1980.

§§ 27-5-1 through 27-5-21. [Codes, 1942, §§ 10008-01 to 10010, 10012; Laws, 1936, ch. 162; Laws, 1938, chs. 144, 155; Laws, 1946, ch. 237, §§ 1-3,6,8,11,20; Laws, 1946, ch. 372, § 4; Laws, 1948, ch. 321, §§ 2,4,7,9; Laws, 1948, ch. 323, §§ 1-6; Laws, 1952, ch. 344, §§ 1,2,5-10, 12; Laws, 1956, ch. 385; Laws, 1958, ch. 490, §§ 1,2; Laws, 1960, ch. 418, §§ 1-3; Laws, 1966, ch. 445, §§ 35-37]

Editor's Note — Former §§ 27-5-1 through 27-5-21 pertained to the motor vehicle comptroller whose functions were transferred to the State Tax Commission, now the Department on Revenue (see § 27-5-151 et seq).

§ 27-5-22. Repealed.

Repealed by Laws of 1984, ch. 478, § 34, eff from and after July 1, 1984.

[En Laws, 1979, ch. 417, § 8]

Editor's Note — Former § 27-5-22 related to certain tax collection and disbursement procedures of the State Tax Commission, now the Department of Revenue.

§§ 27-5-23 through 27-5-35. Repealed.

Repealed by Laws of 1980, ch. 561, § 42, eff from and after July 2, 1980.

§§ 27-5-23 through § 27-5-35. [Codes, 1942, §§ 10008-11, 10008-17 to 10008-22; Laws, 1946, ch. 237, §§ 4,12,16-19; Laws, 1948, ch. 321, §§ 12-14; Laws, 1950, ch. 485, § 3; Laws, 1950, ch. 487, § 4; Laws, 1952, ch. 344, §§ 11,17-22; Laws, 1971, ch. 410, § 1]

Editor's Note — Former §§ 27-5-23 through 27-5-35 pertained to the motor vehicle comptroller whose functions were transferred to the State Tax Commission, now the Department of Revenue (see § 27-5-151 et seq.)

INSPECTION STATIONS

SEC.	
27-5-71.	Definition of inspection station.
27-5-73.	Construction of inspection stations.
27-5-75.	Duties of employees; uniforms; bearing of arms; mandatory retirement.
27-5-77.	Penalties.

§ 27-5-71. Definition of inspection station.

The term "inspection station" as used in Sections 27-5-71 through 27-5-77, Mississippi Code of 1972, shall be deemed to mean and include establishments, either permanent or of a temporary nature, set up adjacent to or near any highway, road, street or other way or place of vehicular travel within the State of Mississippi, for the purpose of aiding in the enforcement and administration of the laws of this state with reference to the levying and collection of taxes on gasoline, oil and other petroleum products; the laws relating to the grades, standards and specifications of gasoline, oil and other petroleum products; the laws relating to the levying and collection of motor vehicle privilege license taxes or other motor vehicle taxes; the laws relating to the size and weight of vehicles operating or to be operated on the roads, streets or highways of this state or with reference to other physical qualifications of any vehicle to be operated on such roads, streets or highways; laws with reference to the nature and extent of any cargo being or to be transported over the roads, streets or highways of this state; the laws with reference to the fitness of a driver or operator of any vehicle which is being or is to be operated over the roads, streets or highways of this state; and laws with reference to the inspection of any vehicle, driver or operator, or cargo when the roads, streets or highways of this state are being or are to be traversed.

SOURCES: Codes, 1942, § 10008-14; Laws, 1946, ch. 372, § 3; Laws, 1948, ch. 325, § 2; Laws, 1952, ch. 344, § 14; Laws, 1992, ch. 496, § 15, eff from and after July 1, 1992.

Cross References — Duty of inspection station employees to enforce the laws mentioned in this section, see § 27-5-75.

RESEARCH REFERENCES

ALR. Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

§ 27-5-73. Construction of inspection stations.

The Mississippi Department of Transportation is hereby authorized and directed to establish and maintain inspection stations adjacent to or near such highways as it may deem necessary and desirable, and at such locations as it may deem necessary. At least forty (40) of the inspection stations, when established, shall be kept open twenty-four (24) hours per day, seven (7) days per week, unless the transportation department determines that adequate enforcement can be maintained by reducing the number of hours that a particular inspection station should remain open. Such inspection stations may be established upon existing rights-of-way or upon additional rights-of-way if it be deemed necessary by the transportation department to acquire such rights-of-way. Necessary driveways shall be constructed across such rights-of-way to the inspection stations and, if necessary, drive-out spaces on the opposite side of the highway from the inspection stations. All inspection stations shall be so located and all drive-outs established and maintained in such a manner that it shall not be necessary for any vehicle to stop with any portion of the vehicle on or within five (5) feet of the paved or traveled portion of the highway. When any inspection station is required to be constructed or reconstructed, the transportation department shall construct the inspection station area with its own forces or by contract.

SOURCES: Codes, 1942, § 10008-13; Laws, 1946, ch. 372, § 3; Laws, 1948, ch. 325, § 3; Laws, 1950, ch. 485, § 1; Laws, 1952, ch. 344, § 13; Laws, 1970, ch. 495, § 1, 1981, ch. 366, § 8; Laws, 1992, ch. 496, § 16, eff from and after July 1, 1992.

Cross References — Trip permits for common and contract carriers, see § 27-19-79.
Common and contract carriers stopping at inspection stations, see § 27-19-93.
Gasoline carriers stopping at inspection stations, see § 27-55-57.

JUDICIAL DECISIONS

1. In general.

Taking of property alongside a highway for the purpose of constructing a weighing scale to enforce the regulations regarding weights of loads and vehicles is within the contemplation of the eminent domain statutes. Roberts v. Mississippi State Hwy. Comm'n, 309 So. 2d 156 (Miss. 1975).

§ 27-5-75. Duties of employees; uniforms; bearing of arms; mandatory retirement.

All employees upon duty at any such inspection station shall have the authority, and it shall be their duty, to enforce the provisions of all laws mentioned in Section 27-5-71, and in the performance of their duties such employees shall have the right to bear arms, and shall have the authority to make arrests and hold and impound any vehicle which is being operated in violation of any of the truck weight and/or privilege tax laws administered by the State Tax Commission specified in Section 27-5-71.

The field inspectors shall also have the right to bear arms while in the performance of their official duties.

All inspection station employees and all field inspectors employed by the State Tax Commission shall wear uniforms furnished by the State Tax Commission while in performance of their official duties.

From and after July 1, 1985, all inspection station employees and all field inspectors who attain the age of sixty-two (62) years on or before June 30, 1986, and those who attain the age of sixty (60) years thereafter shall be retired forthwith.

SOURCES: Codes, 1942, § 10008-15; Laws, 1946, ch. 372, § 3; Laws, 1948, ch. 325, § 8; Laws, 1952, ch. 344, § 15; Laws, 1974, ch. 376; Laws, 1984, ch. 518, § 1; Laws, 1984, 1st Ex Sess, ch. 28, § 1; Laws, 1985, ch. 504, § 5, eff from and after July 1, 1985.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean the "Department of Revenue."

Laws of 1984, ch. 518, § 5, provides as follows:

"SECTION 5. (1) Nothing in Section 27-5-75 or 49-1-15 shall be construed to require employees who were hired prior to July 1, 1985, to retire prior to attaining the age of sixty-five (65) years unless, after attaining the age of sixty-two (62) years on or before June 30, 1986, and those who attain the age of sixty (60) years thereafter, they have completed four (4) years of creditable service for purposes of the Public Employees' Retirement System, at which time they shall be retired forthwith.

"(2) Nothing in Section 27-5-75 or 49-1-15 shall be construed to prevent the State Tax Commission or the Mississippi Department of Wildlife Conservation from operating under an interim retirement policy until June 30, 1985, provided that said policy conforms with the provisions of The Age Discrimination In Employment Act of 1967, 29 U.S.C., Sections 621 et seq., including Section 623(f) thereof.

"(3) No inspection station employee or field inspector employed by the State Tax Commission, or conservation officer employed in the Bureau of Fisheries and Wildlife, shall be dismissed prior to July 1, 1985, solely because of his age, if said employee has not reached the age of seventy (70) years." (Amended, Laws, 1984, 1st Extra Sess., ch 28, § 3; 1985, ch. 504, § 7)."

Cross References — Prohibition of gifts to inspectors, see § 27-19-125.

JUDICIAL DECISIONS

1. In general.

Officers at a vehicle inspection station had the authority to administer field sobriety tests to the defendant truck driver, to arrest him for driving while impaired by drugs, and to arrest him after finding illegal drugs in his truck during a valid vehicle inspection. Edwards v. State, 795 So. 2d 554 (Miss. Ct. App. 2001).

In challenge to mandatory retirement provisions of § 27-5-75, employer may not rely on health and fitness qualifications to retire older officers if it does not seek to maintain minimum levels of these qualifications among younger officers; in this case, although trainees are required to provide extensive physician's certification form, actual practice indicates that there is no commitment to maintain or enforce specific and detailed qualifications contained in that form, and thus State Tax Commission failed to establish bona fide occupational qualification justifying mandatory retirement. EEOC v. Mississippi State Tax Comm'n, 848 F.2d 526 (5th Cir. 1988), vacated on reh'g, 873 F.2d 97 (5th Cir. 1989).

RESEARCH REFERENCES

ALR. Authority of Public Official, Whose Duties or Functions Generally Do Not Entail Traffic Stops, To Effectuate Traffic Stop of Vehicle. 18 A.L.R.6th 519.

§ 27-5-77. Penalties.

If any owner, operator or driver of any carrier of property having a gross vehicle weight in excess of ten thousand (10,000) pounds shall willfully fail or refuse to stop at any inspection station and submit to an inspection or if any owner, operator or driver of any other vehicle which is required by any law or by any rule or regulation of the Mississippi Department of Transportation or State Tax Commission to stop at any inspection station and submit to an inspection shall willfully fail or refuse so to do, then such person shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by confinement in the county jail for not more than thirty (30) days, or by both such fine and jail sentence, in addition to any other penalty or assessment as provided by law.

SOURCES: Codes, 1942, § 10008-16; Laws, 1946, ch. 372, § 3; Laws, 1948, ch. 325, § 9; Laws, 1952, ch. 344, § 16; Laws, 1992, ch. 496, § 17; Laws, 1994, ch. 382, § 1, eff from and after July 1, 1994.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean the "Department of Revenue."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

APPORTIONMENT OF TAXES

Sec.	
27-5-101.	Apportionment of tax by the State Tax Commission.
27-5-103.	Municipal Aid Fund.
27-5-105.	Repealed.

§ 27-5-101. Apportionment of tax by the State Tax Commission.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

Unless otherwise provided in this section, on or before the fifteenth day of each month, all gasoline, diesel fuel or kerosene taxes which are levied under the laws of this state and collected during the previous month shall be paid and apportioned by the State Tax Commission as follows:

(a)(i) Except as otherwise provided in Section 31-17-127, from the gross amount of gasoline, diesel fuel or kerosene taxes produced by the state, there shall be deducted an amount equal to one-sixth (1/6) of principal and interest certified by the State Treasurer to the State Tax Commission to be due on the next semiannual bond and interest payment date, as required under the provisions of Chapter 130, Laws of 1938, and subsequent acts authorizing the issuance of bonds payable from gasoline, diesel fuel or kerosene tax revenue on a parity with the bonds issued under authority of said Chapter 130. The State Treasurer shall certify to the State Tax

Commission on or before the fifteenth day of each month the amount to be paid to the "Highway Bonds Sinking Fund" as provided by said Chapter 130, Laws of 1938, and subsequent acts authorizing the issuance of bonds payable from gasoline, diesel fuel or kerosene tax revenue, on a parity with the bonds issued under authority of said Chapter 130; and the State Tax Commission shall, on or before the twenty-fifth day of each month, pay into the State Treasury for credit to the "Highway Bonds Sinking Fund" the amount so certified to him by the State Treasurer due to be paid into such fund each month. The payments to the "Highway Bonds Sinking Fund" shall be made out of gross gasoline, diesel fuel or kerosene tax collections before deductions of any nature are considered; however, such payments shall be deducted from the allocation to the Mississippi Department of Transportation under paragraph (c) of this section.

(ii) From collections derived from the portion of the gasoline excise tax that exceeds Seven Cents (7¢) per gallon, from the portion of the tax on aviation gas under Section 27-55-11 that exceeds Six and Four-tenths Cents (6.4¢) per gallon, from the portion of the special fuel tax levied under Sections 27-55-519 and 27-55-521, at Eighteen Cents (18¢) per gallon that exceeds Ten Cents (10¢) per gallon, from the portion of the taxes levied under Section 27-55-519, at Five and Three-fourths Cents (5.75¢) per gallon that exceeds One Cent (1¢) per gallon on special fuel and Five and One-fourth Cents (5.25¢) per gallon on special fuel used as aircraft fuel, from the portion of the excise tax on compressed gas used as a motor fuel that exceeds the rate of tax in effect on June 30, 1987, and from the portion of the gasoline excise tax in excess of Seven Cents (7¢) per gallon and the diesel excise tax in excess of Ten Cents (10¢) per gallon under Section 27-61-5 there shall be deducted:

1. An amount as provided in Section 27-65-75(4) to the credit of a special fund designated as the "Office of State Aid Road Construction."

2. An amount equal to the tax collections derived from Two Cents (2¢) per gallon of the gasoline excise tax for distribution to the State Highway Fund to be used exclusively for the construction, reconstruction and maintenance of highways of the State of Mississippi or the payment of interest and principal on bonds when specifically authorized by the Legislature for that purpose.

3. The balance shall be deposited in the State Treasury to the credit of the State Highway Fund.

(b) Subject to the provisions that said basis of distribution shall in no wise affect adversely the amount specifically pledged in paragraph (a) of this section to be paid into the "Highway Bonds Sinking Fund," the following shall be deducted from the amount produced by the state tax on gasoline, diesel fuel or kerosene tax collections, excluding collections derived from the portion of the gasoline excise tax that exceeds Seven Cents (7¢) per gallon, from the portion of the tax on aviation gas under Section 27-55-11 that exceeds Six and Four-tenths Cents (6.4¢) per gallon, from the portion of the special fuel tax levied under Sections 27-55-519 and 27-55-521, at Eighteen

Cents (18¢) per gallon that exceeds Ten Cents (10¢) per gallon, from the portion of the taxes levied under Section 27-55-519, at Five and Three-fourths Cents (5.75¢) per gallon that exceeds One Cent (1¢) per gallon on special fuel and Five and One-fourth Cents (5.25¢) per gallon on special fuel used as aircraft fuel, from the portion of the excise tax on compressed gas used as a motor fuel that exceeds the rate of tax in effect on June 30, 1987, and from the portion of the gasoline excise tax in excess of Seven Cents (7¢) per gallon and the diesel excise tax in excess of Ten Cents (10¢) per gallon under Section 27-61-5:

(i) Twenty percent (20%) of such amount which shall be earmarked and set aside for the construction, reconstruction and maintenance of the highways and roads of the state, provided that if such twenty percent (20%) should reduce any county to a lesser amount than that received in the fiscal year ending June 30, 1966, then such twenty percent (20%) shall be reduced to a percentage to provide that no county shall receive less than its portion for the fiscal year ending June 30, 1966;

(ii) The amount allowed as refund on gasoline or as tax credit on diesel fuel or kerosene used for agricultural, maritime, industrial, domestic, and non highway purposes;

(iii) Five percent (5%) of such amount shall be paid to the State Highway Fund;

(iv) The amount or portion thereof authorized by legislative appropriation to the Fisheries and Wildlife Fund created under Section 59-21-25;

(v) The amount for deposit into the special aviation fund under paragraph (d) of this section; and

(vi) The remainder shall be divided on a basis of nine-fourteenths (9/14) and five-fourteenths (5/14) (being the same basis as Four and One-half Cents (4-½¢) and Two and One-half Cents (2-½¢) is to Seven Cents (7¢) on gasoline, and six and forty-three one-hundredths (6.43) and three and fifty-seven one-hundredths (3.57) is to Ten Cents (10¢) on diesel fuel or kerosene). The amount produced by the nine-fourteenths (9/14) division shall be allocated to the Transportation Department and paid into the State Treasury as provided in this section and in Section 27-5-103 and the five-fourteenths (5/14) division shall be returned to the counties of the state on the following basis:

1. In each fiscal year, each county shall be paid each month the same percentage of the monthly total to be distributed as was paid to that county during the same month in the fiscal year which ended April 9, 1960, until the county receives One Hundred Ninety Thousand Dollars ($190,000.00) in such fiscal year, at which time funds shall be distributed under the provisions of paragraph (b)(vi)4 of this section.

2. If after payments in 1 above, any county has not received a total of One Hundred Ninety Thousand Dollars ($190,000.00) at the end of the fiscal year ending June 30, 1961, and each fiscal year thereafter, then any available funds not distributed under 1 above shall be used to

bring such county or counties up to One Hundred Ninety Thousand Dollars ($190,000.00) or such funds shall be divided equally among such counties not reaching One Hundred Ninety Thousand Dollars ($190,000.00) if there is not sufficient money to bring all the counties to said One Hundred Ninety Thousand Dollars ($190,000.00).

3. When a county has been paid an amount equal to the total which was paid to the same county during the fiscal year ended April 9, 1960, such county shall receive no further payments during the then current fiscal year until the last month of such current fiscal year, at which time distribution will be made under 2 above, except as set out in 4 below.

4. During the last month of the current fiscal year, should it be determined that there are funds available in excess of the amount distributed for the year under 1 and 2 above, then such excess funds shall be distributed among the various counties as follows:

One-third (⅓) of such excess to be divided equally among the counties;

One-third (⅓) of such excess to be paid to the counties in the proportion which the population of each county bears to the total population of the state according to the last federal census;

One-third (⅓) of such excess to be paid to the counties in the proportion which the number of square miles of each county bears to the total square miles in the state.

5. It is the declared purpose and intent of the Legislature that no county shall be paid less than was paid during the year ended April 9, 1960, unless the amount to be distributed to all counties in any year is less than the amount distributed to all counties during the year ended April 9, 1960.

The Municipal Aid Fund as established by Section 27-5-103 shall not participate in any portion of any funds allocated to any county hereunder over and above One Hundred Ninety Thousand Dollars ($190,000.00).

In any county having countywide road or bridge bonds, or supervisors district or district road or bridge bonds outstanding, which exceed, in the aggregate, twelve percent (12%) of the assessed valuation of the taxable property of the county or district, it shall be the duty of the board of supervisors to set aside not less than sixty percent (60%) of such county's share or district's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest on such road or bridge bonds as they mature.

In any county having such countywide road or bridge bonds or district road or bridge bonds outstanding which exceed, in the aggregate, eight percent (8%) of the assessed valuation of the taxable property of the county, but which do not exceed, in the aggregate, twelve percent (12%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than thirty-five percent (35%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest of such road or bridge bonds as they mature.

In any county having such countywide road or bridge bonds or district road or bridge bonds outstanding which exceed, in the aggregate, five percent (5%) of the assessed valuation of the taxable property of the county, but which do not exceed, in the aggregate, eight percent (8%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than twenty percent (20%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest of such road and bridge bonds as they mature.

In any county having such countywide road or bridge bonds or district road or bridge bonds outstanding which do not exceed, in the aggregate, five percent (5%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than ten percent (10%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest on such road or bridge bonds as they mature.

The portion of any such county's share of the gasoline, diesel fuel or kerosene taxes thus set aside for the payment of the principal and interest of road or bridge bonds, as provided for in this section, shall be used first in paying the currently maturing installments of the principal and interest of such countywide road or bridge bonds, if there be any such countywide road or bridge bonds outstanding, and secondly, in paying the currently maturing installments of principal and interest of district road or bridge bonds outstanding. It shall be the duty of the board of supervisors to pay bonds and interest maturing in each supervisors district out of the supervisors district's share of the gasoline, diesel fuel or kerosene taxes of such district.

The remaining portion of such county's share of the gasoline, diesel fuel or kerosene taxes, after setting aside the portion above provided for the payment of the principal and interest of bonds, shall be used in the construction and maintenance of any public highways, bridges, or culverts of the county, including the roads in special or separate road districts, in the discretion of the board of supervisors, or in paying the interest and principal of county road and bridge bonds or district road and bridge bonds, in the discretion of the board of supervisors.

In any county having no countywide road or bridge bonds or district road or bridge bonds outstanding, all such county's share of the gasoline, diesel fuel or kerosene taxes shall be used in the construction, reconstruction, and maintenance of the public highways, bridges, or culverts of the county as the board of supervisors may determine.

In every county in which there are county road bonds or seawall or road protection bonds outstanding which were issued for the purpose of building bridges or constructing public roads or seawalls, such funds shall be used in the manner provided by law.

(c) From the amount produced by the nine-fourteenths (9⁄14) division allocated to the Transportation Department, there shall be deducted:

(i) The amount paid to the State Treasurer for the "Highway Bonds Sinking Fund" under paragraph (a) of this section;

(ii) Any amounts due counties in accordance with Section 65-33-45 which have outstanding bonds issued for seawall or road protection purposes, issued under provisions of Chapter 319, Laws of 1924, and amendments thereto;

(iii) Except as otherwise provided in Section 31-17-127, the remainder shall be paid by the State Tax Commission to the State Treasurer on the fifteenth day of each month next succeeding the month in which the gasoline, diesel fuel or kerosene taxes were collected to the credit of the State Highway Fund.

The funds allocated for the construction, reconstruction, and improvement of state highways, bridges, and culverts, or so much thereof as may be necessary, shall first be used in conjunction with funds supplied by the federal government for such purposes and allocated to the State Transportation Department to be expended on the state highway system. It is specifically provided hereby that the necessary portion of such funds hereinabove allocated to the State Transportation Department may be used for the prompt payment of principal and interest on highway bonds heretofore issued, including such bonds issued or to be issued under the provisions of Chapter 312, Laws of 1956, and amendments thereto.

Nothing contained in this section shall be construed to reduce the amount of such gasoline, diesel fuel or kerosene excise taxes levied by the state, allotted under the provisions of Title 65, Chapter 33, Mississippi Code of 1972, to counties in which there are outstanding bonds issued for seawall or road protection purposes issued under the provisions of Chapter 319, Laws of 1924, and amendments thereto; the amount of said gasoline, diesel fuel or kerosene excise taxes designated in this section for the payment of bonds and interest authorized and issued or to be issued under the provisions of Chapter 130, Laws of 1938, and subsequent acts authorizing the issuance of bonds payable from gasoline, diesel fuel or kerosene tax revenue, shall, in such counties, be considered as being paid "into the State Treasury to the credit of the State Highway Fund" within the meaning of Section 65-33-45 in computing the amount to be paid to such counties under the provisions of said section, and this section shall be administered in connection with Title 65, Chapter 33, Mississippi Code of 1972, and Sections 65-33-45, 65-33-47 and 65-33-49 dealing with seawalls, as if made a part of this section.

(d) The proceeds of the Five and One-fourth Cents (5.25¢) of the tax per gallon on oils used as a propellant for jet aircraft engines, and Six and Four-tenths Cents (6.4¢) of the tax per gallon on aviation gasoline and the tax of One Cent (1¢) per gallon for each gallon of gasoline for which a refund has been made pursuant to Section 27-55-23 because such gasoline was used for aviation purposes, shall be paid to the State Treasury into a special fund to be used exclusively, pursuant to legislative appropriation, for the support and development of aeronautics as defined in Section 61-1-3.

(e) State highway funds in an amount equal to the difference between Forty-two Million Dollars ($42,000,000.00) and the annual debt service payable on the state's highway revenue refunding bonds, Series 1985, shall be expended for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97.

(f) "Gasoline, diesel fuel or kerosene taxes" as used in this section shall be deemed to mean and include state gasoline, diesel fuel or kerosene taxes levied and imposed on distributors of gasoline, diesel fuel or kerosene, and all state excise taxes derived from any fuel used to propel vehicles upon the highways of this state, when levied by any statute.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

Unless otherwise provided in this section, on or before the fifteenth day of each month, all gasoline, diesel fuel or kerosene taxes which are levied under the laws of this state and collected during the previous month shall be paid and apportioned by the State Tax Commission as follows:

(a)(i) Except as otherwise provided in Section 31-17-127, from the gross amount of gasoline, diesel fuel or kerosene taxes produced by the state, there shall be deducted an amount equal to one-sixth (⅙) of principal and interest certified by the State treasurer to the State Tax Commission to be due on the next semiannual bond and interest payment date, as required under the provisions of Chapter 130, Laws of 1938, and subsequent acts authorizing the issuance of bonds payable from gasoline, diesel fuel or kerosene tax revenue on a parity with the bonds issued under authority of said Chapter 130. The State Treasurer shall certify to the State Tax Commission on or before the fifteenth day of each month the amount to be paid to the "Highway Bonds sinking Fund" as provided by said Chapter 130, Laws of 1938, and subsequent acts authorizing the issuance of bonds payable from gasoline, diesel fuel or kerosene tax revenue, on a parity with the bonds issued under authority of said Chapter 130; and the State Tax Commission shall, on or before the twenty-fifth day of each month, pay into the State Treasury for credit to the "Highway Bonds Sinking Fund" the amount so certified to him by the State Treasurer due to be paid into such fund each month. The payments to the "Highway Bonds Sinking Fund" shall be made out of gross gasoline, diesel fuel or kerosene tax collections before deductions of any nature are considered; however, such payments shall be deducted from the allocation to the transportation Department under paragraph (c) of this section.

(ii) From collections derived from the portion of the gasoline excise tax that exceeds Seven Cents (7¢) per gallon, from the portion of the tax on aviation gas under Section 27-55-11 that exceeds six and Four-tenths Cents (6.4¢) per gallon, from the portion of the special fuel tax levied under Sections 27-55-519 and 27-55-521, at Eighteen Cents (18¢) per gallon that exceeds Ten cents (10¢) per gallon, from the portion of the taxes levied under Section 27-55-519, at Five and Three-fourths Cents (5.75¢) per gallon that exceeds One Cent (1¢) per gallon on special fuel and Five and

One-fourth Cents (5.25¢) per gallon on special fuel used as aircraft fuel, from the portion of the excise tax on compressed gas used as a motor fuel that exceeds the rate of tax in effect on June 30, 1987, and from the portion of the gasoline excise tax in excess of Seven Cents (7¢) per gallon and the diesel excise tax in excess of Ten Cents (10¢) per gallon under Section 27-61-5 there shall be deducted:

1. An amount as provided in Section 27-65-75(4) to the credit of a special fund designated as the "Office of State Aid Road construction."

2. An amount equal to the tax collections derived from Two Cents (2¢) per gallon of the gasoline excise tax for distribution to the State Highway Fund to be used exclusively for the construction, reconstruction and maintenance of highways of the State of Mississippi or the payment of interest and principal on bonds when specifically authorized by the Legislature for that purpose.

3. The balance shall be deposited in the State Treasury to the credit of the State Highway Fund.

(b) Subject to the provisions that said basis of distribution shall in no wise affect adversely the amount specifically pledged in paragraph (a) of this section to be paid into the "Highway Bonds Sinking Fund," the following shall be deducted from the amount produced by the state tax on gasoline, diesel fuel or kerosene tax collections, excluding collections derived from the portion of the gasoline excise tax that exceeds Seven Cents (7¢) per gallon, from the portion of the tax on aviation gas under Section 27-55-11 that exceeds Six and Four-tenths Cents (6.4¢) per gallon, from the portion of the special fuel tax levied under Sections 27-55-519 and 27-55-521, at Eighteen Cents (18¢) per gallon, that exceeds Ten Cents (10¢) per gallon, from the portion of the taxes levied under Section 27-55-519, at Five and Three-fourths Cents (5.75¢) that exceeds One Cent (1¢) per gallon on special fuel and Five and One-fourth Cents (5.25¢) per gallon on special fuel used as aircraft fuel, from the portion of the excise tax on compressed gas used as a motor fuel that exceeds the rate of tax in effect on June 30, 1987, and from the portion of the gasoline excise tax in excess of Seven Cents (7¢) per gallon and the diesel excise tax in excess of Ten Cents (10¢) per gallon under Section 27-61-5:

(i) Twenty percent (20%) of such amount which shall be earmarked and set aside for the construction, reconstruction and maintenance of the highways and roads of the state, provided that if such twenty percent (20%) should reduce any county to a lesser amount than that received in the fiscal year ending June 30, 1966, then such twenty percent (20%) shall be reduced to a percentage to provide that no county shall receive less than its portion for the fiscal year ending June 30, 1966;

(ii) The amount allowed as refund on gasoline or as tax credit on diesel fuel or kerosene used for agricultural, maritime, industrial, domestic and nonhighway purposes;

(iii) Five percent (5%) of such amount shall be paid to the State Highway Fund;

(iv) The amount or portion thereof authorized by legislative appropriation to the Fisheries and Wildlife Fund created under Section 59-21-25;

(v) The amount for deposit into the special aviation fund underparagraph (d) of this section; and

(vi) The remainder shall be divided on a basis of nine-fourteenths (9/14) and five-fourteenths (5/14) (being the same basis as Four and One-half Cents (4-½¢) and Two and One-half Cents (2-½¢) is to Seven Cents (7¢) on gasoline, and six and forty-three one-hundredths (6.43) and three and fifty-seven one-hundredths (3.57) is to Ten Cents (10¢) on diesel fuel or kerosene). The amount produced by the nine-fourteenths (9/14) division shall be allocated to the Transportation Department and paid into the State Treasury as provided in this section and in Section 27-5-103 and the five-fourteenths (5/14) division shall be returned to the counties of the state on the following basis:

1. In each fiscal year, each county shall be paid each month the same percentage of the monthly total to be distributed as was paid to that county during the same month in the fiscal year which ended April 9, 1960, until the county receives One Hundred Ninety Thousand Dollars ($190,000.00) in such fiscal year, at which time funds shall be distributed under the provisions of paragraph (b)(vi)4 of this section.

2. If after payments in 1 above, any county has not received a total of One Hundred Ninety Thousand Dollars ($190,000.00) at the end of the fiscal year ending June 30, 1961, and each fiscal year thereafter, then any available funds not distributed under 1 above shall be used to bring such county or counties up to One Hundred Ninety Thousand Dollars ($190,000.00) or such funds shall be divided equally among such counties not reaching One Hundred Ninety Thousand Dollars ($190,000.00) if there is not sufficient money to bring all the counties to said One Hundred Ninety Thousand Dollars ($190,000.00).

3. When a county has been paid an amount equal to the total which was paid to the same county during the fiscal year ended April 9, 1960, such county shall receive no further payments during the then current fiscal year until the last month of such current fiscal year, at which time distribution will be made under 2 above, except as set out in 4 below.

4. During the last month of the current fiscal year, should it be determined that there are funds available in excess of the amount distributed for the year under 1 and 2 above, then such excess funds shall be distributed among the various counties as follows:

One-third (⅓) of such excess to be divided equally among the counties;

One-third (⅓) of such excess to be paid to the counties in the proportion which the population of each county bears to the total population of the state according to the last federal census;

One-third (⅓) of such excess to be paid to the counties in the proportion which the number of square miles of each county bears to the total square miles in the state.

5. It is the declared purpose and intent of the Legislature that no county shall be paid less than was paid during the year ended April 9, 1960, unless the amount to be distributed to all counties in any year is less than the amount distributed to all counties during the year ended April 9, 1960.

The Municipal Aid Fund as established by Section 27-5-103 shall not participate in any portion of any funds allocated to any county hereunder over and above One Hundred Ninety Thousand Dollars ($190,000.00).

In any county having road or bridge bonds outstanding which exceed, in the aggregate, twelve percent (12%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than sixty percent (60%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest on such road or bridge bonds as they mature.

In any county having such road or bridge bonds outstanding which exceed, in the aggregate, eight percent (8%) of the assessed valuation of the taxable property of the county, but which do not exceed, in the aggregate, twelve percent (12%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than thirty-five percent (35%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest of such road or bridge bonds as they mature.

In any county having such road or bridge bonds outstanding which exceed, in the aggregate, five percent (5%) of the assessed valuation of the taxable property of the county, but which do not exceed, in the aggregate, eight percent (8%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than twenty percent (20%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest of such road and bridge bonds as they mature.

In any county having such road or bridge bonds outstanding which do not exceed, in the aggregate, five percent (5%) of the assessed valuation of the taxable property of the county, it shall be the duty of the board of supervisors to set aside not less than ten percent (10%) of such county's share of the gasoline, diesel fuel or kerosene taxes to be used in paying the principal and interest on such road or bridge bonds as they mature.

The portion of any such county's share of the gasoline, diesel fuel or kerosene taxes thus set aside for the payment of the principal and interest of road or bridge bonds, as provided for in this section, shall be used in paying the currently maturing installments of the principal and interest of such road or bridge bonds, if there be any such road or bridge bonds outstanding.

The remaining portion of such county's share of the gasoline, diesel fuel or kerosene taxes, after setting aside the portion above provided for the payment of the principal and interest of bonds, shall be used in the construction and maintenance of any public highways, bridges or culverts of the county, in the discretion of the board of supervisors.

In any county having no road or bridge bonds outstanding, all such county's share of the gasoline, diesel fuel or kerosene taxes shall be used in the construction, reconstruction and maintenance of the public highways, bridges or culverts of the county, as the board of supervisors may determine.

In every county in which there are county road bonds or seawall or road protection bonds outstanding which were issued for the purpose of building bridges or constructing public roads or seawalls, such funds shall be used in the manner provided by law.

(c) From the amount produced by the nine-fourteenths (9⁄14) division allocated to the Transportation Department, there shall be deducted:

(i) The amount paid to the State Treasurer for the "Highway Bonds Sinking Fund" under paragraph (a) of this section;

(ii) Any amounts due counties in accordance with Section 65-33-45 which have outstanding bonds issued for seawall or road protection purposes, issued under provisions of Chapter 319, Laws of 1924, and amendments thereto; and

(iii) Except as otherwise provided in Section 31-17-127, the remainder shall be paid by the State Tax Commission to the State Treasurer on the fifteenth day of each month next succeeding the month in which the gasoline, diesel fuel or kerosene taxes were collected to the credit of the State Highway Fund.

The funds allocated for the construction, reconstruction and improvement of state highways, bridges and culverts, or so much thereof as may be necessary, shall first be used in conjunction with funds supplied by the federal government for such purposes and allocated to the Transportation Department to be expended on the state highway system. It is specifically provided hereby that the necessary portion of such funds herein above allocated to the Transportation Department may be used for the prompt payment of principal and interest on highway bonds heretofore issued, including such bonds issued or to be issued under the provisions of Chapter 312, Laws of 1956, and amendments thereto.

Nothing contained in this section shall be construed to reduce the amount of such gasoline, diesel fuel or kerosene excise taxes levied by the state, allotted under the provisions of Title 65, Chapter 33, Mississippi Code of 1972, to counties in which there are outstanding bonds issued for seawall or road protection purposes issued under the provisions of Chapter 319, Laws of 1924, and amendments thereto; the amount of said gasoline, diesel fuel or kerosene excise taxes designated in this section for the payment of bonds and interest authorized and issued or to be issued under the provisions of Chapter 130, Laws of 1938, and subsequent acts authorizing the issuance of bonds payable from gasoline, diesel fuel or kerosene tax revenue, shall, in such counties, be considered as being paid "into the State Treasury to the credit of the State Highway Fund" within the meaning of Section 65-33-45 in computing the amount to be paid to such counties under the provisions of said section, and this section shall be administered in connection with Title 65, Chapter 33, Mississippi Code of 1972, and Sections

65-33-45, 65-33-47 and 65-33-49 dealing with seawalls, as if made a part of this section.

(d) The proceeds of the Five and One-fourth Cents (5.25¢) of the tax per gallon on oils used as a propellant for jet aircraft engines, and Six and Four-tenths Cents (6.4¢) of the tax per gallon on aviation gasoline and the tax of One Cent (1¢) per gallon for each gallon of gasoline for which a refund has been made pursuant to Section 27-55-23 because such gasoline was used for aviation purposes, shall be paid to the State Treasury into a special fund to be used exclusively, pursuant to legislative appropriation, for the support and development of aeronautics as defined in Section 61-1-3.

(e) State highway funds in an amount equal to the difference between Forty-two Million Dollars ($42,000,000.00) and the annual debt service payable on the state's highway revenue refunding bonds, Series 1985, shall be expended for the construction or reconstruction of highways designated under the highway program created under Section 65-3-97.

(f) "Gasoline, diesel fuel or kerosene taxes" as used in this section shall be deemed to mean and include state gasoline, diesel fuel or kerosene taxes levied and imposed on distributors of gasoline, diesel fuel or kerosene, and all state excise taxes derived from any fuel used to propel vehicles upon the highways of this state, when levied by any statute.

SOURCES: Codes, 1942, § 10013-38; Laws, 1936, ch. 162; Laws, 1938, ch. 144; Laws, 1946, ch. 264, § 38; Laws, 1950, ch. 473, § 5; Laws, 1952, ch. 287; Laws, 1960, ch. 477; Laws, 1964, ch. 528, § 1; Laws, 1966, ch. 645, § 40; Laws, 1981, ch. 309, § 1; Laws, 1981, ch. 464, § 28; Laws, 1984, ch. 446, § 4; Laws, 1987, ch. 322, § 4; Laws, 1988 Ex Sess, ch. 14, § 15; Laws, 1990, ch. 570, § 1; Laws, 1992, ch 548, § 1; Laws, 1994, ch. 557, § 22; Laws, 1999, ch. 461, § 36; Laws, 1999, ch. 575, § 3; Laws, 2002, ch. 582, § 4; Laws, 2005, 2nd Ex Sess, ch. 53, § 2, eff from and after July 1, 2005.

Joint Legislative Committee Note — Section 36 of ch. 461, Laws of 1999, effective from and after September 1, 1999 (approved March 29, 1999) amended this section. Section 3 of ch. 575, Laws of 1999, effective from and after September 1, 1999 (approved April 21, 1999), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 575, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Laws of 1999, ch. 461, §§ 50, 51, provide:

"SECTION 50. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 55, 57 and 61, Mississippi Code of 1972, prior to July 1, 1999, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1999, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1999, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

"SECTION 51. Section 36 of this act shall take effect and be in force from and after September 1, 1999. The remainder of this act shall take effect and be in force from and after July 1, 1999."

Cross References — Requirement that the Department of Revenue withhold all allocations otherwise payable under this section if a certificate of noncompliance to a county has been issued, see § 19-2-11.

Apportionment of tax collections, see § 27-3-57.

Distribution of a portion of proceeds of gasoline, diesel fuel, or kerosene taxes provided for in § 27-5-101 to the Division of State Aid Road Construction Fund created by § 65-9-17, see § 27-65-75.

Distribution of motor vehicle privilege taxes, see § 27-19-159.

Disposition of gasoline excise tax revenues in excess of the amount paid into the highway bonds sinking fund under the requirements of paragraph (a) of this section, see § 27-55-11.

Proceeds of tax on gasoline, see § 27-55-47.

Proceeds of tax on lubricating oils, see §§ 27-57-35, 27-57-37.

Payment and apportionment of proceeds of liquefied compressed gas tax, see § 27-59-49.

Proceeds of liquefied compressed gas tax, see §§ 27-59-49, 27-59-51.

Payment and apportionment of interstate commercial carriers motor fuel taxes, see §§ 27-61-5, 27-61-25.

Applicability of this section to distribution of tax and permit fees collected under Interstate Commercial Carriers Motor Fuel Tax, see § 27-61-25.

Applicability of this section to the distribution of gasoline, diesel fuel and kerosene taxes to the Division of State Aid Road Construction Fund, see § 27-65-75.

Bonds for cost of Four-Lane Highway Program, see § 31-17-127.

Payment of state ports and harbors bonds, see § 59-5-51.

Deduction from reimbursement for delinquencies in payments on obligations for establishment of port, harbor or waterway, see § 59-5-51.

Control of highways by Mississippi Transportation Commission, see § 65-1-47.

Authorization for borrowing to cover costs of construction or reconstruction of highways designated under § 65-3-97, when revenues designated under §§ 27-5-101, 27-19-99, 27-19-325, 27-57-37, 27-65-75, and 65-3-97 are insufficient to fund construction priorities under Four-Lane Highway Program, see § 65-3-97.

Use of gasoline tax to pay county road bonds, see §§ 65-15-9, 65-15-11.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.

1. In general.

Neither § 27-5-101 nor § 27-5-103 violates the due process or equal protection clauses of the United States Constitution or the Mississippi Constitution of 1890. Mississippi Mun. Ass'n v. State, 390 So. 2d 986 (Miss. 1980).

No county has any vested right in any portion of the gasoline tax money except such right as the legislature may grant, and the legislature has the power to distribute a portion of the tax in any manner, upon any basis, and under any formula which it may prescribe. Schaeffer v. Sharp, 328 F. Supp. 762 (S.D. Miss. 1971).

This section is not retrospective or retroactive, but all gasoline taxes collected by the comptroller on and after April 10, 1952, shall be distributed by him in accordance with said chapter 287, with the limitation that for each year after April 10, 1952, no county shall receive in excess of $190,000. McCullen v. State ex rel. Alexander, 217 Miss. 256, 63 So. 2d 856

(1953).

Statutes will be held to have a prospective operation only, unless there is clearly manifested an intention to make them effective retrospectively. McCullen v. State ex rel. Alexander, 217 Miss. 256, 63 So. 2d 856 (1953).

Amendment of 1952 to Gasoline Apportionment Statute is not retrospective in operation, but all gasoline taxes collected by comptroller on or after effective date of April 10, 1952, are to be distributed in accordance with the amendment, with a limitation that for each year no county shall receive in excess of $190,000. McCullen v. State ex rel. Alexander, 217 Miss. 256, 63 So. 2d 856 (1953).

2. Construction and application.

By this section, the legislature intended that the $190,000 limitation on the amount to be distributed to any county should be applied annually. McCullen v. State ex rel. Alexander, 217 Miss. 256, 63 So. 2d 856 (1953).

Funds from gasoline taxes, by virtue of authority hereunder to expend such funds for construction and maintenance of highways, may be used by the state highway commission to appraise and reimburse county for paving highway to be utilized as part of final location of state highway under Code 1942, § 8036. State Hwy. Comm'n v. McGowen ex rel. Hinds County, 198 Miss. 853, 23 So. 2d 893 (1945), error overruled, 198 Miss. 889, 24 So. 2d 330 (1946).

The intent of the statute is that the money shall be applied to roads, bridges and culverts wherever they may be in the county, according to their respective needs and benefit to the public, pursuant to the judgment of the entire board of supervisors, and not arbitrarily according to district lines. Board of Supvrs. v. Hawkins, 192 Miss. 330, 5 So. 2d 684 (1942).

Under former law, the percentage of allotment to the payment of maturing principal and interest of road and bridge bonds depends upon the aggregate amount of the bonds and the assessed valuation of the taxable property of the county, and the allotment is mandatory. Board of Supvrs. v. Hawkins, 192 Miss. 330, 5 So. 2d 684 (1942).

The legislature vested discretion in the supervisors as to how the remainder of the gasoline fund not set aside for payment of road and bridge bonds should be expended, and the supervisors, in performing their duty, should act fairly and in good faith, having in view the good of the entire public, and the courts are without power to interfere with the supervisors' discretion, in the absence of fraud, or manifest abuse and oppression in its exercise. Board of Supvrs. v. Hawkins, 192 Miss. 330, 5 So. 2d 684 (1942).

The circuit court was without authority to apportion among the various districts of a county the portion of the gasoline fund remaining after placing 35 per cent in the county road bond fund, although the board of supervisors, while authorizing the clerk to divide such remainder, failed to make the allotment, since such power was vested by the statute in the supervisors. Board of Supvrs. v. Hawkins, 192 Miss. 330, 5 So. 2d 684 (1942).

An order of the county board of supervisors directing that 35 per cent of gasoline funds coming from the state should be placed in the county road bond fund, and the remainder divided in certain proportions among the various districts of the county, was void, since it did not find and adjudicate in the order the aggregate amount of the county-wide and district road and bridge bonds, and the assessed valuation of the taxable property, as the basis for the allotment of such 35 per cent of funds. Board of Supvrs. v. Hawkins, 192 Miss. 330, 5 So. 2d 684 (1942).

Highway commission held unauthorized to pay gasoline tax funds to state tax collector, suing for counties' alleged statutory share. State Hwy. Comm'n v. Gulley, 167 Miss. 631, 145 So. 351 (1933).

ATTORNEY GENERAL OPINIONS

Alleged violations of the countywide system of road administration, codified at Miss. Code Ann. § 19-2-1 et seq., should be filed with the State Auditor, who has the duty to enforce the provisions of the county unit system by issuing certificates of noncompliance. Brooks, March 2, 2007, A.G. Op. #07-00093, 2007 Miss. AG LEXIS 87.

§ 27-5-103. Municipal Aid Fund.

(1) There is hereby created a fund designated as the municipal aid fund.

(2) After the State Tax Commission has determined the amount of taxes due and distributable to the counties of the state under the provisions of Section 27-5-101, and before making payments to each county, he shall first deduct from each county's share of the allocation of said taxes each month a sum equal to one-twelfth (1⁄12) of the product of the total population of all incorporated municipalities in such county multiplied by Seventy-five Cents (75¢). In no event, however, shall the amount of the deductions made and payable to any municipality from such county's funds exceed Forty Thousand Dollars ($40,000.00) during any one (1) calendar year. The amount so deducted shall be paid into the State Treasury each month by the State Tax Commission, at the same time other gasoline, diesel fuel or kerosene tax funds are now distributed, to the credit of the municipal aid fund created by this section.

(3) From the gross amount of gasoline, diesel fuel or kerosene taxes determined to be due and distributable to the Mississippi Department of Transportation under the provisions of Section 27-5-101, the State Tax Commission shall, before distribution is made to the Mississippi Department of Transportation, deduct each month Eighty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-three Cents ($83,333.33). The amount so deducted shall be paid into the State Treasury each month by the State Tax Commission, at the same time as other gasoline, diesel fuel or kerosene tax funds are now distributed, to the credit of the municipal aid fund created herein.

(4) The amount paid into the municipal aid fund under the provisions of paragraph (2) hereof shall be apportioned and paid to each incorporated municipality of the county in the proportion which the population of each incorporated municipality bears to the total population of all incorporated municipalities in such county, but in no event shall the amount paid to any one (1) municipality out of such county's funds exceed Forty Thousand Dollars ($40,000.00) in any one (1) calendar year. When any one (1) municipality shall have been paid Forty Thousand Dollars ($40,000.00) during any part of a calendar year, then such municipality shall not be entitled to additional funds from such county's funds during such calendar year. In determining the amount to be paid to each municipality, the population of each municipality which has been paid Forty Thousand Dollars ($40,000.00) in any part of a calendar year shall be excluded from the computation of the total population of the incorporated municipalities of such county.

(5) The amount paid into the municipal aid fund, under the provisions of subsection (3) hereof, shall be paid to the incorporated municipalities of this state in the following manner:

(a) Each municipality shall be paid the sum of Two Dollars and Fifty Cents ($2.50) annually per capita up to and including three thousand (3,000) population, with payments to be made monthly in proportionate amounts until the total payment provided herein shall have been made in full.

(b) The remainder of said amount paid into the municipal aid fund under the provisions of subsection (3) hereof and remaining after the payment authorized in paragraph (a) of this subsection, has been made shall be apportioned and paid to the incorporated municipalities of this state having more than three thousand (3,000) population in the proportion which the population of each such participating municipality in excess of three thousand (3,000) bears to the total population over and above the number three thousand (3,000) in each of the various municipalities of the state; provided, however, that the amount distributed under this subsection shall not exceed an amount which, when added to the amount distributed under subsection (4) of this section equals Sixty-five Thousand Dollars ($65,000.00). In determining the amount to be paid to each incorporated municipality, the population of each incorporated municipality which has been paid Sixty-five Thousand Dollars ($65,000.00) under the provisions of subsection (4) of this section or under the provisions of both subsection (4) and this subsection, in any part of a calendar year shall be excluded from the computation of the total population of the incorporated municipalities.

(6) Population figures referred to herein shall mean population as shown by the last available federal census, except municipalities which have been incorporated since the last federal census, or will be incorporated prior to the next federal census, in which case the population shall be in the official count used in procuring the charter of incorporation.

(7) In any county having a county seat which is not an incorporated municipality, the computation shall be made as though the county seat was an incorporated municipality; however, the funds computed to be due such county seat shall be paid to the county treasury wherein such county seat is located and such funds shall be used for road, bridge and street construction or maintenance.

(8) The distribution of funds under this section shall be made by the State Tax Commission by warrants drawn on the State Treasury payable from the municipal aid fund herein created.

(9) All funds paid into the municipal aid fund on and after January 1 of each year and up to and including June 30 of the same year shall be distributed, as provided herein, on or before July 20 of the year in which such funds were paid in. All funds paid into the municipal aid fund on and after July 1 of each year and up to and including December 31 of the same year shall be distributed, as provided herein, on or before January 20 of the next succeeding year.

(10) All funds received by any municipality under the provisions of this section shall be used solely for construction, maintenance or repair of streets, curbs, gutters, storm sewers, bridges, culverts or like street improvements and appurtenances or for payment of bonds and interest issued for such purposes. Any municipality may contract with its board of supervisors, or any member thereof, whereby said construction, maintenance or repair may be performed

by said board or member in which event funds received under this section by such municipality shall first be applied to the payment of said bonds and interest, if any, and the remainder shall be paid over to the county treasury. In the event of such agreement, the contract shall be spread at large upon the minutes of the governing authorities of both such municipality and the board of supervisors of the county.

(11) The manner of apportionment of taxes under Section 27-5-101 shall not be disturbed by the provisions of this section. It is the intent of this section that from its apportionment of taxes under Section 27-5-101, each county shall share with the municipalities in said counties as provided by this section, and the payments made to the county or to municipalities within such county shall be considered as payments to the county in construing the aforementioned Section 27-5-101.

SOURCES: Codes, 1942, § 10013-38.7; Laws, 1955, Ex. ch. 97, §§ 1-11; Laws, 1966, ch. 645, § 41; Laws, 1994, ch. 418, § 1, eff from and after July 1, 1994.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Cross References — Apportionment of tax collections, see § 27-3-57.

Nonparticipation of the municipal aid fund in money allocated in excess of a certain amount to any county from excise taxes on gasoline, diesel fuel, kerosene or oil, see § 27-5-101.

Payment and apportionment of interstate commercial carriers motor fuel taxes, see §§ 27-61-5, 27-61-25.

JUDICIAL DECISIONS

1. In general.

Neither § 27-5-101 nor § 27-5-103 violates the due process or equal protection clauses of the United States Constitution or the Mississippi Constitution of 1890. Mississippi Mun. Ass'n v. State, 390 So. 2d 986 (Miss. 1980).

ATTORNEY GENERAL OPINIONS

A municipality may use municipal aid funds to mow street rights-of-way, to construct and maintain street lights, and to clean and maintain ditches and other drainage structures and facilities which are necessary for drainage of public streets. Lampton, Nov. 20, 1991, A.G. Op. #91-0844.

§ 27-5-105. Repealed.

Repealed by Laws, 1987, ch. 527, § 4, effective from and after September 1, 1987.

[En Laws, 1987, ch. 322, § 5]

Editor's Note — Former § 27-5-105 provided for the deposit of moneys in a special fund designated as the "Division of State Aid Road Construction." For a similar provision, see § 27-65-75.

Laws of 1987, ch. 527, § 1, amending § 27-65-75, provides in the last paragraph of subdivision (4) as follows:

"SECTION 1. Any reference in the general laws of this state or the Mississippi Code of 1972 to Section 5 of House Bill No. 1206, 1987 Regular Session [codified as Section 27-5-105], shall mean and be construed to refer and apply to subsection (4) of Section 27-65-75."

TRANSFER OF FUNCTIONS TO STATE TAX COMMISSION

SEC.	
27-5-151.	Purpose.
27-5-153.	Abolition of Office of Motor Vehicle Comptroller; transfer of functions to State Tax Commission.
27-5-155.	Assumption of contracts and liabilities; transfer of funds, assets, records, equipment and the like.
27-5-157.	Preferential status of employees terminated due to consolidation.
27-5-159.	Maintenance of books, records and accounts by persons liable for taxes; inspection by commission.

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

§ 27-5-151. Purpose.

The Legislature hereby declares its intent and purpose to achieve a greater degree of economy and efficiency in the government of this state. Achievement of this end is essential to counter the accelerating rate of the cost and complexity of government, as well as to meet the continuing demand for services. By abolishing a multi-faceted governmental department, and thereupon transferring by function all of the duties and responsibilities of that department to existing agencies which can ably assume those duties and responsibilities, the intent and purpose of the legislature will be implemented.

SOURCES: Laws, 1980, ch. 561, § 1, eff from and after July 2, 1980.

§ 27-5-153. Abolition of Office of Motor Vehicle Comptroller; transfer of functions to State Tax Commission.

(1) The Office of Motor Vehicle Comptroller is hereby abolished. All of the functions of the office are hereby transferred to the State Tax Commission as provided in Sections 27-5-151 through 27-5-159, Mississippi Code of 1972,

including but not limited to those functions enumerated in subsection (2) of this section. Whenever the term "Motor Vehicle Comptroller" or the word "comptroller," meaning Motor Vehicle Comptroller, appears in the laws of the State of Mississippi, it shall mean "State Tax Commission."

(2)(a) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the administration of all laws pertaining to the levying and collecting of excise taxes upon gasoline, oil, liquefied compressed gas used for motor vehicle fuel supply purposes and other petroleum products are hereby transferred to the State Tax Commission unless otherwise specified in Sections 27-5-151 through 27-5-159, Mississippi Code of 1972.

(b) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the administration of all laws pertaining to the gauging and calibration of tank trucks are hereby transferred to the State Tax Commission unless otherwise specified in Sections 27-5-151 through 27-5-159, Mississippi Code of 1972.

(c) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the administration of all laws pertaining to the titling and licensing of motor vehicles, all laws pertaining to motor vehicle fueling centers, and all laws pertaining to the weighing and inspection stations along the highways of this state, are hereby transferred to the State Tax Commission unless otherwise specified in Sections 27-5-151 through 27-5-159, Mississippi Code of 1972. However, from and after July 1, 1992, any duty and responsibility relative to the administration of laws pertaining to the weighing and inspection stations along the highways of this state are transferred to the Mississippi Department of Transportation.

(d) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the inspection of all motor vehicles operating upon all roads and highways within this state and his authority to require them to submit to a weighing by means of portable scales are hereby transferred to the State Tax Commission; however, from and after July 1, 1992, such duties and responsibilities are transferred to the Mississippi Department of Transportation.

(e) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the administration of all laws pertaining to storage, manufacture, refinement or distillation of liquefied compressed gases are hereby transferred to the State Tax Commission unless otherwise specified in Sections 27-5-151 through 27-5-159, Mississippi Code of 1972.

(f) The duties of the Motor Vehicle Comptroller relative to shop inspection of containers, pressure vessels and/or tanks which are manufactured or fabricated in this state are hereby transferred to the State Tax Commission.

(g) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the levying and collecting of the annual motor vehicle privilege taxes are hereby transferred to the State Tax Commission.

(h) Any duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the operation of the Petroleum Products Laboratory at Mississippi State University are hereby transferred to the State Tax Commission.

(i) The duties and responsibilities of the Office of Motor Vehicle Comptroller relative to the administration of all laws specifically pertaining to the regulation of the sale of antifreeze are hereby transferred to the State Tax Commission.

SOURCES: Laws, 1980, ch. 561, § 2; Laws, 1992, ch. 496, § 18, eff from and after July 1, 1992.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean the Department of Revenue.

The duties and responsibilities outlined in subsections (2)(h) and (2)(i) have been transferred to the State Chemist by Section 75-56-5 (regulation of sale of antifreeze) and Section 75-55-3 (operation of Petroleum Products Laboratory).

The duties and responsibilities outlined in subsection (2)(e) have been transferred to the State Fire Marshall's office by Section 75-57-2.

The duties and responsibilities outlined in subsection (2)(f) were transferred to the State Fire Marshall's office by former Section 75-57-53 [now repealed].

Cross References — Transfer of powers, duties and functions of State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

§ 27-5-155. Assumption of contracts and liabilities; transfer of funds, assets, records, equipment and the like.

(1) The State Tax Commission shall assume and honor all contracts, indebtedness, liabilities and other obligations which have been incurred prior to July 1, 1980, by the office of motor vehicle comptroller as to those powers, responsibilities, duties, functions, privileges, or rights that are transferred by Sections 27-5-151 through 27-5-159, but only to the extent that the contracts, indebtedness, liabilities or other obligations were lawfully incurred by the office of motor vehicle comptroller.

(2) The State Tax Commission is hereby entitled to the receipt of all funds, assets, monies or accounts to which the office of motor vehicle comptroller has been, is or will be entitled, pursuant to the transfer of duties as provided in Sections 27-5-151 through 27-5-159.

(3) The State Tax Commission is hereby entitled to the receipt of all funds, assets, monies or accounts related to the transfer of duties pursuant to Sections 27-5-151 through 27-5-159 to which the motor vehicle comptroller has been, is or will be entitled, pursuant to the transfer of duties as provided in Sections 27-5-151 through 27-5-159.

(4) The State Tax Commission is hereby entitled to the receipt of all relevant and material records, reports, statistics, files or other documents and any equipment, automobiles, furniture or other property related thereto of the office of motor vehicle comptroller pursuant to the transfer of duties as provided in Sections 27-5-151 through 27-5-159.

SOURCES: Laws, 1980, ch. 561, § 3, eff from and after July 2, 1980.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-5-157. Preferential status of employees terminated due to consolidation.

Any individual whose employment is terminated because of a duplication of effort or position resulting from the agency consolidation provided for in Sections 27-5-151 through 27-5-159 may be given preferential status if he makes application for further state employment, all other qualifications being satisfied.

SOURCES: Laws, 1980, ch. 561, § 4, eff from and after July 2, 1980.

§ 27-5-159. Maintenance of books, records and accounts by persons liable for taxes; inspection by commission.

(1) All persons who are liable for any taxes under any law transferred to the state tax commission by the provisions of Sections 27-5-151 through 27-5-159 shall keep full, complete, adequate and intelligible records, books and accounts in the English language, which books, records and accounts shall truly and correctly show and disclose the amount and extent of the liability of such person for such taxes and all other pertinent and material matters and facts with reference to such person's liability for such taxes. Such records shall be kept and preserved by such person for a period of three (3) years. The state tax commission shall have the power and authority to require all persons liable for any taxes under any of the laws which the commission is required to administer and enforce pursuant to Sections 27-5-151 through 27-5-159 to produce within this state, at such reasonable time and place as the commission may designate, any and all books, accounts, papers and records within or without this state pertaining to their liability for taxes under any of the laws which the commission is required to enforce pursuant to Sections 27-5-151 through 27-5-159, or for any other purpose relating to the enforcement and administration of such laws. The commission shall also have the power and authority to examine and inspect during the usual business hours of the day all records, books, papers and accounts of any person pertaining to the tax liability of such person under any of the laws which the commission is required to enforce pursuant to Sections 27-5-151 through 27-5-159 and for any other purpose in connection with such laws.

(2) The term "person" as used in this section shall mean any individual, partnership, corporation, firm or other legal entity.

SOURCES: Laws, 1980, ch. 561, § 5, eff from and after July 2, 1980.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

CHAPTER 7

Income Tax and Withholding

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ARTICLE 1.

INCOME TAX.

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27-7-107. Contribution to Mississippi Bicentennial Celebration Fund from state income tax refund [Repealed effective January 1, 2019].

§ 27-7-1. Citation of article.

This article may be cited as the Income Tax Law of 1952.

SOURCES: Codes, 1942, § 9220-01; Laws, 1952, ch. 402, § 1, eff from and after January 1, 1952.

Cross References — Withholding of tax, see § 27-7-301 et seq.

Mississippi S Corporation Income Tax, see § 27-8-1 et seq.

Compliance with income tax law as condition to homestead exemption allowance, see § 27-33-63.

Requirement of bond from contractors subject to sales tax for payment of income tax, see § 27-65-21.

Amounts to be deposited in the Superconducting Super Collider Fund out of tax receipts, see § 57-67-15.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

It is well settled by the federal supreme court that in imposing taxes for state purposes a state is not exercising any power which the federal Constitution has conferred upon Congress, but it is only when the tax operates to regulate commerce between the states or with foreign nations, to an extent which infringes the authority conferred upon Congress, that the tax exceeds the limitations imposed by the federal Constitution. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

The state cannot tax interstate commerce in any form whatever. Miller v. Illinois Cent. R. Co., 146 Miss. 422, 111 So. 558 (1927).

If all of same class for taxation are taxed alike, equality clauses of state and federal constitutions are complied with. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

State may impose tax on net income of residents and corporations created by it, and may include therein income derived from business without state. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

Income tax is an excise and not subject to constitutional requirement of taxing property in proportion to value and assessment under general laws according to value. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

Constitutional requirement that taxes shall be assessed by assessor and collected by sheriff does not apply to income taxes. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

Tax on net income is not burden on interstate commerce, although part is derived from such commerce. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

2. Construction and application.

The 1924 income tax statute was but an amendment and continuation of the 1912 statute. Fernwood Lumber Co. v. Mississippi State Tax Comm'n, 167 Miss. 273, 149 So. 727 (1933).

Income tax laws are to be strictly construed against the taxing power and doubts resolved in favor of the taxpayer. Miller v. Illinois Cent. R. Co., 146 Miss. 422, 111 So. 558 (1927).

RESEARCH REFERENCES

ALR. Liability for additions to deficiencies for fraud, imposed by income tax laws, as surviving taxpayer's death. 15 A.L.R.2d 1036.

Reliance on attorney, accountant, or other expert in preparing income tax returns as defense against fraud penalties. 22 A.L.R.2d 972.

Deduction of cost of acquiring, protecting, or disposing of title to income-producing property as a nontrade or nonbusiness expense. 23 A.L.R.2d 902.

Income tax consequences to shareholder of dividend in kind. 56 A.L.R.2d 474.

Income tax: corporate assets as received in liquidation or by purchase where stock is purchased to acquire assets. 83 A.L.R.2d 718.

State tax on trust income as affected by foreign elements. 5 A.L.R.3d 606.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 358 et seq.

CJS. 85 C.J.S., Taxation § 1970 et seq.

Lawyers' Edition. Tax leglislation as violating Federal Constitution's First Amendment-Supreme Court cases. 103 L. Ed. 2d 951.

State income tax as violating immunity of United States — Supreme Court cases. 103 L. Ed. 2d 1027.

§ 27-7-3. Definitions.

When used in this article:

(a) "Taxpayer" includes any individual, partnership, corporation, association, trust or estate, subject to a tax imposed hereunder, or whose income is, in whole or in part, subject to a tax imposed hereunder.

(b) "Domestic," when applied to any corporation or association, including partnerships, means created or organized in the State of Mississippi.

(c) "Foreign," when applied to any corporation or association, including partnerships, means created or organized outside the State of Mississippi.

(d) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity, for any person, trust, or estate.

(e) "Resident" means a natural person and includes, for the purpose of determining liability for the tax imposed by this article upon or with reference to the income of any taxable year, any person domiciled in the State of Mississippi and any other person who maintains a legal or actual residence within the state.

(f) "Nonresident," when used in connection with this article, shall apply to any natural person whose domicile and place of abode is without the State of Mississippi.

(g) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States. The words "United States" includes the states, the District of Columbia, and the territorial possessions of the United States.

(h) "State Tax Commission" or "Tax Commission" means the Department of Revenue. "Commission" or "department" also means the Department of Revenue except where such words are specifically given other meanings.

(i) "Commissioner," "Chairman of the Mississippi State Tax Commission," "Chairman of the State Tax Commission," "chairman of the commission" or "chairman" means the Commissioner of Revenue of the Department of Revenue.

(j) "Taxable year" means the calendar year, or fiscal year ending during such calendar year, upon the basis of which the net income is computed hereunder. "Fiscal year" means an accounting period of twelve (12) months, ending on the last day of any month other than December.

(k) "Paid or accrued" means paid or accrued, or paid or incurred, and these terms, "paid or incurred" or "paid or accrued," shall be construed according to the method of accounting or the basis on which the net income is computed. The term "received for the purpose of computation of net income" means received or accrued, and the term "received or accrued" shall be construed according to the method of accounting or the basis on which the net income is computed.

(*l*) "Dividend" means any distribution made by a corporation, association, trust or estate, to its shareholders or members, whether in cash, other property, or its own stock.

SOURCES: Codes, 1942, § 9220-02; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 2; Laws, 2009, ch. 492, § 41, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit,

approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue generally, see § 27-3-1 et seq.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to the Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

JUDICIAL DECISIONS

1. In general.

Taxpayers who maintained residences in both Mississippi and Tennessee would be liable for Mississippi personal income tax for the years 1980 through 1988, even though they established that they intended to make Tennessee their domicile during that time, since they retained sufficient ties to Mississippi and availed themselves of the privileges of state citizenship to be legal residents for tax purposes where they continued to vote in Mississippi elections, held Mississippi drivers licenses, and claimed a homestead exemption in Mississippi for 3 of those years. State Tax Comm'n v. Earnest, 627 So. 2d 313 (Miss. 1993).

The statutory definition of "legal resident" clearly indicates that domicile and legal or actual residence for purposes of incurring liability for income tax are separate and distinct concepts; the legislature intended to impose income tax liability on persons who were legal or actual residents even though, by their intent, they were domiciled elsewhere. State Tax Comm'n v. Earnest, 627 So. 2d 313 (Miss. 1993).

The court referred to this section in determining the proportion of income of a manufacturing company having plants in Mississippi and other states which is taxable in Mississippi. Reliance Mfg. Co. v. Barr, 245 Miss. 86, 146 So. 2d 569 (1962).

The undivided share assigned to a nonresident stockholder in the assets of a dissolved foreign corporation, the business of which is continued upon its dissolution under the direction of its former chief stockholder and the property of which is not actually distributed in kind but kept intact, is not a liquidating dividend. Hewgley v. Stone, 200 Miss. 486, 27 So. 2d 693 (1946).

The word "person" as used in a former statute was held to include both artificial and natural persons. Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34, 88 So. 4, 25 A.L.R. 748 (1921), error overruled, 126 Miss. 655, 89 So. 369 (1921), error dismissed, 260 U.S. 710, 43 S. Ct. 249, 67 L. Ed. 475 (1923).

RESEARCH REFERENCES

ALR. Domicile for state tax purposes of wife living apart from husband. 82 A.L.R.3d 1274.

§ 27-7-5. Imposition of the tax.

(1) There is hereby assessed and levied, to be collected and paid as hereinafter provided, for the calendar year 1983 and fiscal years ending during the calendar year 1983 and all taxable years thereafter, upon the entire net income of every resident individual, corporation, association, trust or estate, in excess of the credits provided, a tax at the following rates:

(a)(i) Through calendar year 2017, on the first Five Thousand Dollars ($5,000.00) of taxable income, or any part thereof, the rate shall be three percent (3%);

(ii) For calendar year 2018, on the first One Thousand Dollars ($1,000.00) of taxable income there shall be no tax levied, and on the next Four Thousand Dollars ($4,000.00) of taxable income, or any part thereof, the rate shall be three percent (3%);

(iii) For calendar year 2019, on the first Two Thousand Dollars ($2,000.00) of taxable income there shall be no tax levied, and on the next Three Thousand Dollars ($3,000.00) of taxable income, or any part thereof, the rate shall be three percent (3%);

(iv) For calendar year 2020, on the first Three Thousand Dollars ($3,000.00) of taxable income there shall be no tax levied, and on the next Two Thousand Dollars ($2,000.00) of taxable income, or any part thereof, the rate shall be three percent (3%);

(v) For calendar year 2021, on the first Four Thousand Dollars ($4,000.00) of taxable income there shall be no tax levied, and on the next One Thousand Dollars ($1,000.00) of taxable income, or any part thereof, the rate shall be three percent (3%);

(vi) For calendar year 2022 and all taxable years thereafter, there shall be no tax levied on the first Five Thousand Dollars ($5,000.00) of taxable income;

(b) On taxable income in excess of Five Thousand Dollars ($5,000.00) up to and including Ten Thousand Dollars ($10,000.00), or any part thereof, the rate shall be four percent (4%); and

(c) On all taxable income in excess of Ten Thousand Dollars ($10,000.00), the rate shall be five percent (5%).

(2) An S corporation, as defined in Section 27-8-3(1)(g), shall not be subject to the income tax imposed under this section.

(3) A like tax is hereby imposed to be assessed, collected and paid annually, except as hereinafter provided, at the rate specified in this section and as hereinafter provided, upon and with respect to the entire net income, from all property owned or sold, and from every business, trade or occupation carried on in this state by individuals, corporations, partnerships, trusts or estates, not residents of the State of Mississippi.

(4) In the case of taxpayers having a fiscal year beginning in a calendar year with a rate in effect that is different than the rate in effect for the next calendar year and ending in the next calendar year, the tax due for that taxable year shall be determined by:

(a) Computing for the full fiscal year the amount of tax that would be due under the rates in effect for the calendar year in which the fiscal year begins; and

(b) Computing for the full fiscal year the amount of tax that would be due under the rates in effect for the calendar year in which the fiscal year ends; and

(c) Applying to the tax computed under paragraph (a) the ratio which the number of months falling within the earlier calendar year bears to the total number of months in the fiscal year; and

(d) Applying to the tax computed under paragraph (b) the ratio which the number of months falling within the later calendar year bears to the total number of months within the fiscal year; and

(e) Adding to the tax determined under paragraph (c) the tax determined under paragraph (d) the sum of which shall be the amount of tax due for the fiscal year.

SOURCES: Codes, 1942, § 9220-03; Laws, 1934, ch. 120; Laws, 1938, ch. 115; Laws, 1940, ch. 111; Laws, 1942, ch. 124; Laws, 1944, ch. 125, § 1; Laws, 1952, ch. 402, § 3; Laws, 1960, ch. 456, § 1; Laws, 1960, ch. 457, § 1; Laws, 1968, ch. 580, § 26; Laws, 1982, Ex Sess, ch. 17, § 31; Laws, 1984, 1st Ex Sess, ch. 10, § 1; Laws, 1992, ch. 484, § 7; Laws, 1993, ch. 456, § 12; Laws, 2016, ch. 499, § 1, eff from and after Jan. 1, 2016.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment, effective January 1, 2016, designated the formerly undesignated second through fourth paragraphs of (1) as (1)(a) through (c); in (1)(a), added "Through calendar year 2017" at the beginning, substituted "thereof, the rate shall be three" for "thereof, at the rate of three," and added (ii) through (vi); rewrote (1)(b), which read: "On the next Five Thousand Dollars ($5,000.00) of taxable income, or any part thereof, at the rate of four percent (4%); and"; substituted "thereof, the rate shall be five" for "thereof, at the rate of five" in (1)(c); and in (4), rewrote the introductory paragraph, which read: "In the case of taxpayers having a fiscal year beginning in the calendar year 1982 and ending after the first day of January 1983, the tax due for that taxable year shall be determined by," in (a), substituted "in which the fiscal year begins" for "1982" and in (b), substituted "in which the fiscal year ends" for "1983."

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Tax credits against taxes imposed by this chapter, see §§ 27-7-22.3 through 27-7-22.36.

Increase in tax imposed by this section by reason of inclusion of LIFO recapture amount in corporation's income is payable in four equal installments, see § 27-7-45.

Withholding of tax, see § 27-7-301 et seq.

Refund to taxpayer, see § 27-7-313.

Exemption of S corporations from tax imposed by this section, see § 27-8-7.

Payment of income tax by S corporations on behalf of shareholders, see § 27-8-19.

Premium taxes on insurance companies, see § 27-15-103 et seq.

Contractor's payment or security for payment of income taxes, see § 27-65-21.

Transfer of remaining balance of Working Cash Balance Revolving Fund into the General Fund and the Working Cash-Stabilization Reserve Fund, see § 27-103-207.

For provisions relating to the state bond commission and notes to maintain a working balance in the general fund, see § 31-17-101 et seq.

Provisions relating to borrowing not to exceed an amount which can be repaid in the fiscal year of loan, see § 31-17-123.

Applicability of the income tax provisions to the income and profits earned on bonds issued and sold by the Business Finance Corporation, see § 57-10-255.

Tax levied under this chapter as exception to tax exempt status of bonds issued to finance economic development projects, see § 57-10-439.

Amounts to be deposited in the Superconducting Super Collider Fund out of tax receipts, see § 57-67-15.

Taxpayer claiming credit under § 57-105-1 against the taxes imposed by this section not required to pay any additional tax under § 27-15-123 as a result of claiming the credit, see § 57-105-1.

JUDICIAL DECISIONS

1. In general.

Chancery court did not err in dismissing a taxpayer's complaint against the Mississippi Department of Revenue (MDOR) for lack of subject-matter jurisdiction because the taxpayer failed to pursue the administrative remedies available to him; the MDOR provided sufficient notice to the taxpayer of his tax assessments. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

Bankruptcy debtor failed to show that the debtor's business was not profitable to excuse the debtor's failure to file income tax returns or rebut the presumption that the agency's assessment of the debtor's income tax liability was correct. Blalock v. Miss. Dep't of Rev. (In re Blalock), 537 B.R. 284 (Bankr. S.D. Miss. 2015).

New Hampshire commuters' income tax applicable to nonresidents only, with no corresponding tax on residents, was held violative of privileges and immunities clause. Austin v. New Hampshire, 420 U.S. 656, 95 S. Ct. 1191, 43 L. Ed. 2d 530 (1975).

A state has the right to collect a tax on income earned in the taxing state, although the taxpayer is a citizen of a different state. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

The purpose of the state income tax law, in so far as a foreign corporation is concerned, is to tax its income, which is earned in the state, and there is no purpose to tax such income where it is earned outside the state, as this is not permissible. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

The law unquestionably favors the specific accounting by foreign corporations and theories of allocation have no place in determining income tax on corporation if net income within state can be distinguished from outside business. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

Tax on income from testamentary trust distributed annually to a large number of beneficiaries, only a few of whom resided in the state, was taxable to the beneficiaries and not to the trustees. State ex rel. Rice v. Stirling, 199 Miss. 555, 24 So. 2d 776 (1946).

Neither Code 1942, § 9222 nor Code 1942, § 9231, imposing a tax on the net income derived from the sale by foreign corporation of natural gas at wholesale to a nonresident corporation doing business in Mississippi, delivered at various points in Mississippi along such corporation's main pipeline extending from gas field in Louisiana, through Arkansas and Mississippi, and terminating at Memphis, Tennessee, contravened the commerce clause of the federal Constitution. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

Code 1942, § 9222 and Code 1942, § 9231 imposed a tax on the net income of a foreign corporation attributable to its activities and ownership of property in Mississippi, although such property was used exclusively in the furtherance of the corporation's interstate business. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

Neither Code 1942, § 9222 nor Code 1942, § 9231, imposing a tax on the net income of a foreign corporation attributable to its activities and ownership of property in Mississippi, although such property was used exclusively in the furtherance of the corporation's interstate business, violated the commerce clause of the Federal Constitution. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

Income tax, graduated according to amount of income, did not violate requirement of equality of taxation, nor deny equal protection of laws. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

RESEARCH REFERENCES

ALR. Income tax treatment of payment to spouse for relinquishment of inchoate marital rights in property of other spouse. 1 A.L.R.2d 1037.

Dividend in kind or stock dividend as affecting corporation's income tax. 7 A.L.R.2d 750.

Income and excess profits tax of cooperative association and its patrons or members. 8 A.L.R.2d 925.

Income tax consequences to shareholder of dividend in kind. 56 A.L.R.2d 474.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 358 et seq. (income taxes).

CJS. 85 C.J.S., Taxation § 1975 et seq.

§ 27-7-7. Tax a debt.

The tax imposed by this article, and all increases, interest and penalties provided for in connection with such tax, shall be in addition to all other taxes imposed by law. The tax imposed pursuant to this article, and the increases, interest and penalties provided in connection with such tax shall, in addition to being a tax against the property, business, trade, profession or occupation, be and become from the time same is due and payable a personal debt of the taxpayer liable to pay the same to the state and said increases, interest and penalties which shall accrue shall be recoverable as a part of the tax with respect to which they are imposed.

SOURCES: Codes, 1942, § 9220-04; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 4-a; Laws, 1954, ch. 389.

§ 27-7-9. Gain or loss on disposition of property.

(a) Except as provided in Sections 27-7-95 through 27-7-103, determination of amount of gain or loss.

(1) **Computation of gain or loss.** The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in subsection (c) for determining gain, and the loss shall be the excess of the adjusted basis provided in subsection (c) for determining loss over the amount realized.

(2) **Amount realized.** The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(3) **Installment sales.** Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

(b) **Recognition of gain or loss.** Except as otherwise provided in this section, on the sale or exchange of property the entire amount of the gain or loss, determined under subsection (a), shall be recognized.

(c) **Adjusted basis for determining gain or loss.**

(1) **In general.** The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (d) adjusted as provided in subsection (e).

(2) **Bargain sale to a charitable organization.** If a deduction is allowed under Section 27-7-17 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.

(d) **Basis of property.**

(1) **Property acquired after March 16, 1912.** The basis for ascertaining the gain derived or the loss sustained from the sale or other disposition of property, real, personal or mixed, shall be, in the case of property acquired after March 16, 1912, the cost of such property, except as otherwise provided in this subsection.

(2) **Inventory property.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(3) **Property acquired by gift.** In the case of property acquired by gift after January 1, 1936, the basis shall be the same as that which it would

have in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee, the commissioner shall, if possible, obtain such facts from such donor, or last preceding owner, or any other person cognizant thereof. If the commissioner finds it impossible to obtain such facts, the commissioner shall establish a basis for the property from the best information available. In the case of property acquired by gift on or before January 1, 1936, the basis for ascertaining gain or loss from the sale or other disposition thereof shall be the fair market price or value of such property at the time of acquisition.

(4) **Property acquired by bequests, devises and inheritance.** If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, the basis shall be the fair market value of the property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, the basis in the hands of the estate shall be the fair market value of the property at the time of the death of the decedent. In all other cases, if the property was acquired either by will or by intestacy, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death.

(5) **Property acquired by a transfer in trust.** If the property was acquired by a transfer in trust (other than by a transfer in trust by a bequest or devise), the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain, or decreased in the amount of loss, recognized to the grantor upon such transfer under this section.

(6) **Property acquired in tax-free exchanges.** If the property was acquired upon an exchange described in subsection (f), the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange by the terms of this act. If the property so acquired consisted in part of the type of property permitted by subsection (f) to be received without recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange.

(7) **Property acquired in tax-free distribution.** If the property consists of stock or securities distributed to a taxpayer in connection with a transaction described in subsection (f), the basis in the case of the stock in

respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the commissioner, between such stock and the stock or securities distributed.

(8) **Property acquired in involuntary conversions.** If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (f), the basis shall be the same as in the case of property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of said subsection determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion.

(9) **Property acquired in wash sales.** If substantially identical property was acquired in place of stock or securities which were sold or disposed of and in respect of which loss was not allowed as a deduction under Section 27-7-17(d), the basis in the case of property so acquired shall be the basis in the case of the stock or securities so sold or disposed of, except that, if the repurchase price was in excess of the sales price, such basis shall be increased in the amount of the difference, or if the repurchase price was less than the sales price, such basis shall be decreased in the amount of the difference.

(10) **Property acquired before March 16, 1912.** The basis for determining the gain or loss from the sale or other disposition of property acquired before March 16, 1912, shall be:

(A) The cost of such property (or in the case of such property as is described in subsection (d)(2) or (4) of this section the basis as therein provided, or in the case of property acquired by gift or transfer in trust, the fair market value of such property at the time of such acquisition); or

(B) The fair market value of such property as of March 16, 1912, whichever is greater.

In determining the fair market value of stock in a corporation as of March 16, 1912, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(e) **Adjustments to basis.**

(1) **In general.** In computing the amount of gain or loss from the sale or other disposition of property, proper adjustment shall be made for any expenditure, receipt, loss or other item, properly chargeable to capital account since the basis date. The cost or other basis of the property shall also be diminished by the amount of the deductions for exhaustion, wear and tear, obsolescence, amortization and depletion, which have since the acquisition of the property been allowable in respect of such property whether or not such deductions were claimed by the taxpayer or formerly allowed. In the case of stock, the basis shall be diminished by the amount of distributions previously made in respect to such stock, to the extent provided under this section.

(2) **Substituted basis.** Whenever it appears that the basis of the property in the hands of a taxpayer is a substituted basis, then the

adjustments provided in subsection (e)(1) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor or grantor, or during which the other property was held by the person for whom the basis is to be determined. The term "substituted basis" as used in this subsection means a basis determined under any provision of this section or under any corresponding provision of a prior Income Tax Law, providing that the basis shall be determined by reference to the basis in the hands of a transferor, donor or grantor, or, by reference to other property held at any time by the person for whom the basis is to be determined.

(f) **Recognition of gain or loss — exceptions.**

(1) **Exchange solely in kind.**

(A) **Property held for productive use or investment.** No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidence of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment. In addition, no gain or loss shall be recognized on any exchange of property if no gain or loss is recognized with regard to such exchange under Section 1031 of the Internal Revenue Code.

(B) **Stock for stock in same corporation.** No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(C) **Transfers to corporation controlled by transferor.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and if immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two (2) or more persons, this subsection shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(D) **Stock for stock on reorganization.** No gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation, a party to a reorganization.

(2) **Gain from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (f)(1) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by subsection (f)(1) to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received.

(3) **Loss from exchanges not solely in kind.** If an exchange would be within the provisions of subsection (f)(1) of this section, if it were not for the fact that the property received in exchange consists not only of property permitted by subsection (f)(1) to be received without the recognition of gain or loss but also of other property or money, then no loss from the exchange shall be recognized.

(4) **Distribution of stock on reorganization.** If in pursuance of a plan of reorganization, there is distributed to a shareholder in a corporation, a party to the reorganization, stock or securities in such corporation or in another corporation, a party to the reorganization, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(5) **Distribution with effect of taxable dividend.** If a distribution made in pursuance of a plan of reorganization is within the provisions of subsection (f)(4) of this section, but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under subsection (f)(2) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation. The remainder, if any, of the gain recognized under subsection (f)(2) shall be taxed as a gain from the exchange of property.

(6) **Involuntary conversions.** If property, as a result of its destruction in whole or in part, theft, seizure or requisition or condemnation, or threat or imminence thereof, is compulsorily or involuntarily converted:

(A) Into property similar or related in service or use to the property so converted, no gain shall be recognized, but loss shall be recognized;

(B) Into money, no gain shall be recognized if such money is expended, within a period ending two (2) years after the close of the first taxable year in which any part of the gain upon the conversion is realized, in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, but loss shall be recognized. Such two-year period shall be extended to five (5) years with respect to property in the Hurricane Katrina disaster area, as defined in the Katrina Emergency Tax Relief Act of 2005, which is compulsorily or involuntarily converted on or after August 29, 2005, by reason of Hurricane Katrina, but only if substantially all of the use of the replacement property is in such area. If any part of the money is not so expended, the gain shall be recognized to the extent of the money which is not so expended, regardless of whether such money is received in one or more taxable years and regardless of whether or not the money which is not so expended constitutes gain. Provided, gain realized on property which is compulsorily or involuntarily converted for public use under Title 11, Chapter 27, Mississippi Code of 1972, or any federal law relating to the involuntary conversion of property for public use shall not be recognized. Provided further, that gain realized on property which is voluntarily converted for public use shall not be recognized after it becomes evident that eminent domain proceedings are probable.

Except as otherwise provided, the provisions of this subsection relating to the nonrecognition of gain, including the exception provided in subparagraph (B), shall apply only to an owner of the converted property who has held title to such property for a period at least three (3) years prior to the date of the disposition of the converted property, provided that an owner who acquired such property by bequest, devise, gift or inheritance shall be excluded from this limitation, if the preceding owner acquired title to such property at least three (3) years prior to the date of disposition. However, no gain shall be recognized on property that is compulsorily or involuntarily converted if no gain is recognized with regard to such property under Section 1033 of the Internal Revenue Code.

(7) **Property exchanged treated as equivalent of cash.** When property other than property specified in subsection (f)(1)(A) of this section is exchanged for other property, the property received in exchange shall, for the purpose of determining gain or loss, be treated as the equivalent of cash to the amount of its fair market value.

(8) **Distribution of assets of corporation.** The distribution to the taxpayer of the assets of a corporation shall be treated as a sale of the stock or securities of the corporation owned by him, and the gain or loss shall be computed accordingly.

(9) **Organization of a corporation.** In the case of the organization of a corporation, the stock and securities received shall be considered to take the place of property transferred therefor, and no gain or loss shall be deemed to arise therefrom.

(10) **Sales of certain interests in financial institutions domiciled in Mississippi, domestic corporations, domestic limited partnerships or domestic limited liability companies.** No gain shall be recognized from the sale of authorized shares in financial institutions domiciled in Mississippi and domestic corporations, or partnership interests in domestic limited partnerships and domestic limited liability companies, that have been held for more than one (1) year; however, any gain that would otherwise be excluded by this provision shall first be applied against, and reduced by, any losses determined from sales or transactions described by this provision if the losses were incurred in the year of the gain or within the two (2) years preceding or subsequent to the gain.

(g) **Reorganization defined.** The term “reorganization” means:

(1) A statutory merger or consolidation;

(2) The acquisition by one (1) corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation, or of substantially all the properties of another corporation;

(3) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately

before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(4) A recapitalization; or

(5) A mere change in identity, form or place of organization, however effected.

(h) **Party to a reorganization defined.** The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one (1) corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(i) **Control defined.** As used in this section, the term "control" means the ownership of at least eighty percent (80%) of the voting stock and at least eighty percent (80%) of the total number of shares of all other classes of stock of the corporation.

(j) **Special rules.**

(1) **Liquidation of subsidiaries.** A transfer to a parent corporation from its subsidiary of property distributed in complete liquidation of the subsidiary shall result in no recognized gain or loss if the basis of the property in the hands of the parent corporation is the same as it was in the hands of the subsidiary.

(2) **Gain or loss on sales or exchanges in connection with certain liquidations.** Corporations adopting a plan of complete liquidation under the provisions of the Internal Revenue Code shall recognize the gain or loss from the sale or exchange of property by the corporation under said plan. The total gain or loss from the liquidating distributions shall be recognized by the shareholders; however, a credit for the tax paid by the liquidating corporation on the gain from the sale or exchange of property under the plan of liquidation will be allowed to the extent of any tax liability to the shareholders. The corporation shall provide to the Department of Revenue a list of all shareholders with their percentage of ownership, distribution, tax credit allowed and any other information requested.

(3) **Distribution of stock and securities of a controlled corporation.** No gain shall be recognized on a distribution to a stockholder of a corporation if such gain would not be recognized to such stockholder for federal income tax purposes under the provisions of Section 355 of the Internal Revenue Code. With respect to the distributing corporation, no gain shall be recognized from such distribution provided the distribution is a part of a transaction that qualifies for tax-free treatment under the provisions of Section 355 or 368(a)(1)(D) of the Internal Revenue Code. Additionally, with respect to a distributing corporation, no gain shall be recognized from such distribution provided the distribution is pursuant to an overall plan to facilitate an ultimate distribution that qualifies for tax-free treatment under the provisions of Section 355 or 368(a)(1)(D) of the Internal Revenue Code.

(4) Notwithstanding the other provisions of this section, a corporation or other entity that is involved in restructuring, reorganizing, distributing assets or profits, or changing ownership that results in an adjustment to its

asset basis is required to report a gain in the year such transaction occurs on any such transaction when the transaction involves assets owned or used in this state, or otherwise represents assets owned or used in this state. If a transfer of income or a change in asset valuation occurs on the tax records of the taxpayer, such transaction shall result in taxation to this state to the extent of the transfer of income or change in asset valuation.

(5) If a corporation or other entity makes an Internal Revenue Code Section 338 election, or other similar election under which the aggregate basis in assets are increased on the tax records of the taxpayer, then a similar election must also be made for Mississippi purposes, but the gain must be recognized by the corporation in which the increase in basis of the assets occurs. The corporation or other entity is allowed to increase its basis by the amount of gain recognized. An aggregate write-down of assets is not allowed. The parent corporation shall recognize the gain on the disposition of its stock.

(6) For state tax purposes, a corporation or other legal entity is considered separate from its shareholders, affiliated corporations or other entities. If a corporation or other legal entity enters into any transaction that is for the benefit of its shareholders or for the benefit of an affiliated corporation without an equal mutual business benefit of the corporation, then, the transaction will be adjusted or eliminated to arrive at taxable income to this state. All transactions entered into by a corporation must be at "arms-length." If requested by the commissioner, the taxpayer must be able to substantiate that the transaction occurred at "arms-length." If not, the transaction may be adjusted to the satisfaction of the commissioner. In determining whether the transaction occurred at arms-length, the commissioner shall consider the following:

(A) Whether the transaction is in compliance with the federal regulations promulgated under Internal Revenue Code Section 482;

(B) Whether the transaction was done for a valid business purpose;

(C) Whether the income being shifted by the transaction is subject to a tax in another state;

(D) Whether the transaction is consistent with the results that would have been realized if uncontrolled taxpayers had engaged in the same transaction under the same circumstances; and

(E) Other factors which support the conclusion that income is being shifted to avoid the tax imposed by this chapter.

(k) **Sale or exchange of residence.**

(1) **Loss on sale or exchange of residence.** Loss from the sale or exchange of property used by the taxpayer as his principal residence is not recognized and cannot be deducted.

(2) **Nonrecognition of gain.** Gain shall be computed in accordance with the provisions of the Internal Revenue Code, rules, regulations and revenue procedures relating to the sale or exchange of a personal residence not in direct conflict with the provisions of the Mississippi Income Tax Law.

(3) **Gain on the sale or exchange of residence.** A recognizable gain on the sale or exchange of a personal residence shall be included in gross income and treated as ordinary income.

(*l*) **Distributions by corporations.**

(1) Distributions of the property of a corporation, including partial and complete liquidations, shall be recognized by the distributing corporation and the gain or loss shall be computed on the difference of the fair market value of the assets distributed and their basis. The total gain or loss from the distributions to the shareholders shall be recognized by the shareholders subject to subsections (f)(8) and (j)(1); however, a credit for the tax paid by the distributing corporation on the gain from the sale or exchange of property under the plan of distribution will be allowed to the extent of any liability to the shareholders. The corporation shall provide to the Department of Revenue a list of all shareholders with their percentage of ownership, distribution, tax credit allowed and any other information requested.

(2) **Source of distributions.** For the purposes of this act, every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings and profits. Any earnings or profit accumulated, or increase in value of property acquired, before March 16, 1912, may be distributed exempt from tax (after the earnings and profits accumulated after March 16, 1912, have been distributed), but any such tax-free distribution shall be applied against and reduce the basis of the stock provided in subsection (d).

(3) **Distributions in liquidation.** Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under subsection (a), but shall be recognized only to the extent provided in subsection (f). In the case of amounts distributed in partial liquidation, the part of such distribution which is property chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of paragraph (2) of this subsection for the purpose of determining the taxability of subsequent distributions by the corporations.

(4) **Other distributions.** If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders, is not out of increase in value of property accrued before March 16, 1912, and is not out of earnings or profits, then the amount of such distribution shall be applied against and reduce the basis of the stock provided in subsection (d), and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

(5) **Stock dividends.** A stock dividend shall not be subject to tax.

(6) **Cancellation or redemption of stock.** If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the

distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after March 16, 1912, shall be treated as a taxable dividend.

(7) **"Amounts distributed in partial liquidation" defined.** As used in this subsection, the term "amounts distributed in partial liquidation" means distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

(8) **Distributions of stock pursuant to order enforcing the Antitrust Laws.** Any distribution of stock which is made pursuant to the order of any court enforcing the Antitrust Laws of the United States, or of any state, shall be a distribution which is not out of earnings and profits of the distributing corporation, but the value of the stock so distributed shall be applied against and reduce the basis of the stock of the distributing corporation provided in subsection (d), and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

SOURCES: Codes, 1942, § 9220-05; Laws, 1936, ch. 151; Laws, 1950, ch. 534; Laws, 1952, ch. 402, § 4-b; Laws, 1958, ch. 554, § 1; Laws, 1978, ch. 527, § 1; Laws, 1980, ch. 461, § 1; Laws, 1982, ch. 339; Laws, 1984, ch. 447, § 1; Laws, 1985, ch. 52, § 1; Laws, 1988, ch. 391, § 1; Laws, 1989, ch. 485, § 1; Laws, 1991, ch. 524, § 6; Laws, 1994, ch. 474, § 1; Laws, 1995, ch. 478, § 1; Laws, 1997, ch. 396, § 1; Laws, 1998, ch. 543, § 1; Laws, 2001, ch. 586, § 1; Laws, 2003, ch. 319, § 1; Laws, 2005, ch. 469, § 1; Laws, 2007, ch. 491, § 1; Laws, 2012, ch. 482, § 1, eff from and after Jan. 1, 2012.

Editor's Note — Laws of 1998, ch. 543, § 4, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2001, ch. 586, §§ 8, 9, provide as follows:

"SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

"SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (f)(6)(B) was corrected by substituting "Title 11, Chapter 27, Mississippi Code of 1972" for "Title II, Chapter 27, Mississippi Code of 1972"

Cross References — Applicability of the adjusted basis of a certified pollution or environmental control for purposes of determining gain to computation of such a facility's amortizable basis for purposes of a deduction with respect to amortization, see § 27-7-17.

Treatment or losses from sales or exchanges of capital assets, see §§ 27-7-95 through 27-7-103.

Federal Aspects — Antitrust laws of the United States generally, see 15 USCS §§ 1 et seq.

Internal Revenue Code generally, see USCS, Title 26.

Sections 338, 355, 482, 1031, 1033 of the Internal Revenue Code, see 26 USCS §§ 338, 355, 482, 1031, 1033.

Katrina Emergency Tax Relief Act of 2005, P.L. 109-73, 119 Stat. 2016, see 26 USCS § 1 note.

Sections 338, 355, 368(a)(1)(D), 482, 1031, 1033 of the Internal Revenue Code, see 26 USCS §§ 338, 355, 368(a)(1)(D), 482, 1031, 1033.

JUDICIAL DECISIONS

1. In general.

The 1997 amendment to Miss. Code Ann. § 27-7-9(f)(10)(B) did nothing to alter the applicability of 26 U.S.C.S. § 1245 and its regulations to the recapture of depreciation/amortization under Miss. Code Ann. § 27-7-9(f)(10)(B); on remand, the Mississippi State Tax Commission (MSTC) was to apply 26 U.S.C.S. § 1245 and its corresponding regulations in determining the amount realized in the same manner as it would have prior to the 1997 amendment, recognizing the limited change caused by the substitution of up to cost recapture for the pre-amendment recapture calculation contained in § 1245(a), and the MSTC had to recalculate and assess the taxes due for depreciation/amortization recapture. Barton v. Blount, 981 So. 2d 299 (Miss. Ct. App. 2007), writ of certiorari denied by 981 So. 2d 298, 2008 Miss. LEXIS 209 (Miss. 2008).

Mississippi Code § 27-7-9(j)(3), as such subsection read in 1980, which required that 3 percent of the corporate distribution, following corporate liquidation under § 327 of the federal Internal Revenue Code, to be withheld from distribution to shareholders and paid over to the state tax commissioner, and further provided that payments to the commissioner would be treated as shareholders' estimated tax payments under the Mississippi Tax Withholding Act, to be allocated pro rata to the shareholders' tax payment account, was applicable to both Mississippi resident and nonresident shareholders, and, because of the benefits provided by the state, the subsection was constitutional as it applied to nonresident shareholders. Anderson v. Lambert, 494 So. 2d 370 (Miss. 1986).

Upon dissolution of a corporation, a stockholder is protected against being charged with a taxable gain through the transfer to him of his share of the corporation's assets at an appreciated value, and likewise he should be denied the privilege of computing a nontaxable loss on the same basis. Urschel v. Stone, 198 Miss. 105, 21 So. 2d 466 (1945).

RESEARCH REFERENCES

ALR. Income tax: holding period for purposes of computation of gain or loss on sale of partner's interest in firm. 7 A.L.R.2d 672.

Income tax: market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss. 12 A.L.R.2d 589.

Income tax consequences to shareholder of dividend in kind. 56 A.L.R.2d 474.

What constitutes trade or business under Internal Revenue Code (U.S.C.S. Title 26). 161 A.L.R. Fed. 245.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation, § 457 et seq.

20 Am. Jur. Proof of Facts 2d 565, Establishment of Intangible Asset as Amortizable.

CJS. 85 C.J.S., Taxation § 2018 et seq.

§ 27-7-11. Inventories.

Whenever, in the opinion of the commissioner, the use of inventories is necessary in order to clearly determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the commissioner may prescribe, with the approval of the governor, in order to conform as nearly as may be to the best accounting practice in the trade or business, and in order to clearly reflect the income.

SOURCES: Codes, 1942, § 9220-06; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 5, eff from and after January 1, 1952.

Cross References — Commissioner as meaning the Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 647 (inventory of merchandise).

CJS. 85 C.J.S., Taxation § 1901 et seq.

§ 27-7-13. Net income defined.

(1) The term "net income" means the gross income as defined hereunder, less allowable business expenses and expenses incurred in the taxpayer's regular trade or profession.

(2) The net income which may be subjected to tax shall be determined upon the basis of the taxpayer's annual accounting period, either fiscal or calendar year, and in keeping with the method or manner of accounting regularly employed by the taxpayer in maintaining his or its books of account. Any departure from such books of account shall be made only because of the necessity of omitting certain income excluded from gross income under the provisions of this article, or excluding such deductions which are not provided for herein; provided, however, that in the case of taxpayers subject to regulation by any federal governmental regulatory agency or by a regulatory agency of the State of Mississippi, adjustments will be made from the books of account, if necessary, so as to reflect the taxpayer's true net income. Estimated deductions shall be subject to the approval of the commissioner.

(3) But, if no such method and manner of accounting has been employed, or if the method or manner employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as, in the opinion of the commissioner, clearly reflects the income.

(4) If the taxpayer's annual accounting period is other than a fiscal year as defined in this article, or if he has no annual accounting period, or does not keep books, the net income shall be computed upon the basis of the calendar year.

(5) The taxpayer may elect to file his first return on the basis of receipts and disbursements or the accrual basis, but having exercised this election, he must secure the permission of the commissioner to change such basis.

SOURCES: Codes, 1942, § 9220-07; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 6; Laws, 1958, ch. 554, § 2; Laws, 1966, ch. 628, § 1, eff from and after passage (approved June 17, 1966).

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Establishment of "Victims of Domestic Violence Fund" and expenditure of monies from such fund, see § 93-21-117.

RESEARCH REFERENCES

ALR. Income tax consequences to shareholder of dividend in kind. 56 A.L.R.2d 474.

Federal income tax of corporate employee or officer in respect of stock option given him by corporation, or sold to him at less than its value. 72 A.L.R.2d 1352.

Decision to take foreign income taxes as federal credit under Section 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes. 77 A.L.R.4th 823.

§ 27-7-15. Gross income defined.

(1) For the purposes of this article, except as otherwise provided, the term "gross income" means and includes the income of a taxpayer derived from salaries, wages, fees or compensation for service, of whatever kind and in whatever form paid, including income from governmental agencies and subdivisions thereof; or from professions, vocations, trades, businesses, commerce or sales, or renting or dealing in property, or reacquired property; also from annuities, interest, rents, dividends, securities, insurance premiums, reinsurance premiums, considerations for supplemental insurance contracts, or the transaction of any business carried on for gain or profit, or gains, or profits, and income derived from any source whatever and in whatever form paid. The amount of all such items of income shall be included in the gross income for the taxable year in which received by the taxpayer. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "gross income" within the meaning of this article.

(2) In determining gross income for the purpose of this section, the following, under regulations prescribed by the commissioner, shall be applicable:

(a) **Dealers in property.** Federal rules, regulations and revenue procedures shall be followed with respect to installment sales unless a transaction results in the shifting of income from inside the state to outside the state.

(b) **Casual sales of property.**

(i) Prior to January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except they shall be applied and administered as if H.R. 3594, the Installment Tax Correction Act of 2000 of the 106th Congress, had not been enacted. This provision will generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

(ii) From and after January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except as provided in this subparagraph (ii). Gain or profit from the casual sale of property shall be recognized in the year of sale. When a taxpayer recognizes gain on the casual sale of property in which the gain is deferred for federal income tax purposes, a taxpayer may elect to defer the payment of tax resulting from the gain as allowed and to the extent provided under regulations prescribed by the commissioner. If the payment of the tax is made on a deferred basis, the tax shall be computed based on the applicable rate for the income reported in the year the payment is made. Except as otherwise provided in subparagraph (iii) of this paragraph (b), deferring the payment of the tax shall not affect the liability for the tax. If at any time the installment note is sold, contributed, transferred or disposed of in any manner and for any purpose by the original note holder, or the original note holder is merged, liquidated, dissolved or withdrawn from this state, then all deferred tax payments under this section shall immediately become due and payable.

(iii) If the selling price of the property is reduced by any alteration in the terms of an installment note, including default by the purchaser, the gain to be recognized is recomputed based on the adjusted selling price in the same manner as for federal income tax purposes. The tax on this amount, less the previously paid tax on the recognized gain, is payable over the period of the remaining installments. If the tax on the previously recognized gain has been paid in full to this state, the return on which the payment was made may be amended for this purpose only. The statute of limitations in Section 27-7-49 shall not bar an amended return for this purpose.

(c) **Reserves of insurance companies.** In the case of insurance companies, any amounts in excess of the legally required reserves shall be included as gross income.

(d) **Affiliated companies or persons.** As regards sales, exchanges or payments for services from one to another of affiliated companies or persons or under other circumstances where the relation between the buyer and seller is such that gross proceeds from the sale or the value of the exchange or the payment for services are not indicative of the true value of the subject matter of the sale, exchange or payment for services, the commissioner shall prescribe uniform and equitable rules for determining the true value of the gross income, gross sales, exchanges or payment for services, or require consolidated returns of affiliates.

(e) **Alimony and separate maintenance payments.** The federal rules, regulations and revenue procedures in determining the deductibility and taxability of alimony payments shall be followed in this state.

(f) **Reimbursement for expenses of moving.** There shall be included in gross income (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one (1) residence to another residence which is attributable to employment or self-employment.

(3) In the case of taxpayers other than residents, gross income includes gross income from sources within this state.

(4) The words "gross income" do not include the following items of income which shall be exempt from taxation under this article:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured. However, the income from the proceeds of such policies or contracts shall be included in the gross income.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance policies, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent, but the income from such property shall be included in the gross income.

(d) Interest upon the obligations of the United States or its possessions, or securities issued under the provisions of the Federal Farm Loan Act of 1916, or bonds issued by the War Finance Corporation, or obligations of the State of Mississippi or political subdivisions thereof.

(e) The amounts received through accident or health insurance as compensation for personal injuries or sickness, plus the amount of any damages received for such injuries or such sickness or injuries, or through the War Risk Insurance Act, or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States.

(f) Income received by any religious denomination or by any institution or trust for moral or mental improvements, religious, Bible, tract, charitable, benevolent, fraternal, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes or for two (2) or more of such purposes, if such income be used exclusively for carrying out one or more of such purposes.

(g) Income received by a domestic corporation which is "taxable in another state" as this term is defined in this article, derived from business activity conducted outside this state. Domestic corporations taxable both within and without the state shall determine Mississippi income on the same basis as provided for foreign corporations under the provisions of this article.

(h) In case of insurance companies, there shall be excluded from gross income such portion of actual premiums received from an individual policyholder as is paid back or credited to or treated as an abatement of premiums of such policyholder within the taxable year.

(i) Income from dividends that has already borne a tax as dividend income under the provisions of this article, when such dividends may be specifically identified in the possession of the recipient.

(j) Amounts paid by the United States to a person as added compensation for hazardous duty pay as a member of the Armed Forces of the United

States in a combat zone designated by Executive Order of the President of the United States.

(k) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid under the federal Social Security Act, the Railroad Retirement Act, the Federal Civil Service Retirement Act, or any other retirement system of the United States government, retirement allowances paid under the Mississippi Public Employees' Retirement System, Mississippi Highway Safety Patrol Retirement System or any other retirement system of the State of Mississippi or any political subdivision thereof. The exemption allowed under this paragraph (k) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(*l*) Amounts received as retirement allowances, pensions, annuities or optional retirement allowances paid by any public or governmental retirement system not designated in paragraph (k) or any private retirement system or plan of which the recipient was a member at any time during the period of his employment. Amounts received as a distribution under a Roth Individual Retirement Account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended. The exemption allowed under this paragraph (l) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(m) National Guard or Reserve Forces of the United States compensation not to exceed the aggregate sum of Five Thousand Dollars ($5,000.00) for any taxable year through the 2005 taxable year, and not to exceed the aggregate sum of Fifteen Thousand Dollars ($15,000.00) for any taxable year thereafter.

(n) Compensation received for active service as a member below the grade of commissioned officer and so much of the compensation as does not exceed the maximum enlisted amount received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which such members of the Armed Forces (i) served in a combat zone as designated by Executive Order of the President of the United States or a qualified hazardous duty area as defined by federal law, or both; or (ii) was hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone. For the purposes of this paragraph (n), the term "maximum enlisted amount" means and has the same definition as that term has in 26 USCS 112.

(o) The proceeds received from federal and state forestry incentive programs.

(p) The amount representing the difference between the increase of gross income derived from sales for export outside the United States as compared to the preceding tax year wherein gross income from export sales was highest, and the net increase in expenses attributable to such increased exports. In the absence of direct accounting, the ratio of net profits to total sales may be applied to the increase in export sales. This paragraph (p) shall only apply to businesses located in this state engaging in the international export of Mississippi goods and services. Such goods or services shall have at least fifty percent (50%) of value added at a location in Mississippi.

(q) Amounts paid by the federal government for the construction of soil conservation systems as required by a conservation plan adopted pursuant to 16 USCS 3801 et seq.

(r) The amount deposited in a medical savings account, and any interest accrued thereon, that is a part of a medical savings account program as specified in the Medical Savings Account Act under Sections 71-9-1 through 71-9-9; provided, however, that any amount withdrawn from such account for purposes other than paying eligible medical expense or to procure health coverage shall be included in gross income.

(s) Amounts paid by the Mississippi Soil and Water Conservation Commission from the Mississippi Soil and Water Cost-Share Program for the installation of water quality best management practices.

(t) Dividends received by a holding corporation, as defined in Section 27-13-1, from a subsidiary corporation, as defined in Section 27-13-1.

(u) Interest, dividends, gains or income of any kind on any account in the Mississippi Affordable College Savings Trust Fund, as established in Sections 37-155-101 through 37-155-125, to the extent that such amounts remain on deposit in the MACS Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 37-155-105.

(v) Interest, dividends or gains accruing on the payments made pursuant to a prepaid tuition contract, as provided for in Section 37-155-17.

(w) Income resulting from transactions with a related member where the related member subject to tax under this chapter was required to, and did in fact, add back the expense of such transactions as required by Section 27-7-17(2). Under no circumstances may the exclusion from income exceed the deduction add-back of the related member, nor shall the exclusion apply to any income otherwise excluded under this chapter.

(x) Amounts that are subject to the tax levied pursuant to Section 27-7-901, and are paid to patrons by gaming establishments licensed under the Mississippi Gaming Control Act.

(y) Amounts that are subject to the tax levied pursuant to Section 27-7-903, and are paid to patrons by gaming establishments not licensed under the Mississippi Gaming Control Act.

(z) Interest, dividends, gains or income of any kind on any account in a qualified tuition program and amounts received as distributions under a qualified tuition program shall be treated in the same manner as provided under the United States Internal Revenue Code, as amended. For the purposes of this paragraph (z), the term "qualified tuition program" means and has the same definition as that term has in 26 USCS 529.

(aa) The amount deposited in a health savings account, and any interest accrued thereon, that is a part of a health savings account program as specified in the Health Savings Accounts Act created in Sections 83-62-1 through 83-62-9; however, any amount withdrawn from such account for purposes other than paying qualified medical expenses or to procure health coverage shall be included in gross income, except as otherwise provided by Sections 83-62-7 and 83-62-9.

(bb) Amounts received as qualified disaster relief payments shall be treated in the same manner as provided under the United States Internal Revenue Code, as amended.

(cc) Amounts received as a "qualified Hurricane Katrina distribution" as defined in the United States Internal Revenue Code, as amended.

(dd) Amounts received by an individual which may be excluded from income as foreign earned income for federal income tax purposes.

(ee) Amounts received by a qualified individual, directly or indirectly, from an employer or nonprofit housing organization that are qualified housing expenses associated with an employer-assisted housing program. For purposes of this paragraph (ee):

(i) "Qualified individual" means any individual whose household income does not exceed one hundred twenty percent (120%) of the area median gross income (as defined by the United States Department of Housing and Urban Development), adjusted for household size, for the area in which the housing is located.

(ii) "Nonprofit housing organization" means an organization that is organized as a not-for-profit organization under the laws of this state or another state and has as one of its purposes:

1. Homeownership education or counseling;
2. The development of affordable housing; or
3. The development or administration of employer-assisted housing programs.

(iii) "Employer-assisted housing program" means a separate written plan of any employer (including, without limitation, tax-exempt organizations and public employers) for the exclusive benefit of the employer's employees to pay qualified housing expenses to assist the employer's employees in securing affordable housing.

(iv) "Qualified housing expenses" means:

1. With respect to rental assistance, an amount not to exceed Two Thousand Dollars ($2,000.00) paid for the purpose of assisting employees with security deposits and rental subsidies; and
2. With respect to homeownership assistance, an amount not to exceed the lesser of Ten Thousand Dollars ($10,000.00) or six percent (6%) of the purchase price of the employee's principal residence that is paid for the purpose of assisting employees with down payments, payment of closing costs, reduced interest mortgages, mortgage guarantee programs, mortgage forgiveness programs, equity contribution programs, or contributions to home buyer education and/or homeownership counseling of eligible employees.

(ff) For the 2010 taxable year and any taxable year thereafter, amounts converted in accordance with the United States Internal Revenue Code, as amended, from a traditional Individual Retirement Account to a Roth Individual Retirement Account. The exemption allowed under this paragraph (ff) shall be available to the spouse or other beneficiary at the death of the primary retiree.

(gg) Amounts received for the performance of disaster or emergency-related work as defined in Section 27-113-5.

(hh) The amount deposited in a catastrophe savings account established under Sections 27-7-1001 through 27-7-1007, interest income earned on the catastrophe savings account, and distributions from the catastrophe savings account; however, any amount withdrawn from a catastrophe savings account for purposes other than paying qualified catastrophe expenses shall be included in gross income, except as otherwise provided by Sections 27-7-1001 through 27-7-1007.

(ii) Interest, dividends, gains or income of any kind on any account in the Mississippi Achieving a Better Life Experience (ABLE) Trust Fund, as established in Chapter 28, Title 43, to the extent that such amounts remain on deposit in the ABLE Trust Fund or are withdrawn pursuant to a qualified withdrawal, as defined in Section 43-28-11.

(jj) Subject to the limitations provided under Section 27-7-1103, amounts deposited into a first-time home buyer savings account and any interest or other income earned attributable to an account and monies or funds withdrawn or distributed from an account for the payment of eligible costs by or on behalf of a qualified beneficiary; however, any monies or funds withdrawn or distributed from a first-time home buyer savings account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary shall be included in gross income. For the purpose of this paragraph (jj), the terms "first-time home buyer savings account," "eligible costs" and "qualified beneficiary" mean and have the same definitions as such terms have in Section 27-7-1101.

(5) Prisoners of war, missing in action-taxable status.

(a) **Members of the Armed Forces.** Gross income does not include compensation received for active service as a member of the Armed Forces of the United States for any month during any part of which such member is in a missing status, as defined in paragraph (d) of this subsection, during the Vietnam Conflict as a result of such conflict.

(b) **Civilian employees.** Gross income does not include compensation received for active service as an employee for any month during any part of which such employee is in a missing status during the Vietnam Conflict as a result of such conflict.

(c) **Period of conflict.** For the purpose of this subsection, the Vietnam Conflict began February 28, 1961, and ends on the date designated by the President by Executive Order as the date of the termination of combatant activities in Vietnam. For the purpose of this subsection, an individual is in a missing status as a result of the Vietnam Conflict if immediately before such status began he was performing service in Vietnam or was performing service in Southeast Asia in direct support of military operations in Vietnam. "Southeast Asia," as used in this paragraph, is defined to include Cambodia, Laos, Thailand and waters adjacent thereto.

(d) "Missing status" means the status of an employee or member of the Armed Forces who is in active service and is officially carried or determined to be absent in a status of (i) missing; (ii) missing in action; (iii) interned in a foreign country; (iv) captured, beleaguered or besieged by a hostile force; or (v) detained in a foreign country against his will; but does not include the status of an employee or member of the Armed Forces for a period during which he is officially determined to be absent from his post of duty without authority.

(e) "Active service" means active federal service by an employee or member of the Armed Forces of the United States in an active duty status.

(f) "Employee" means one who is a citizen or national of the United States or an alien admitted to the United States for permanent residence and is a resident of the State of Mississippi and is employed in or under a federal executive agency or department of the Armed Forces.

(g) "Compensation" means (i) basic pay; (ii) special pay; (iii) incentive pay; (iv) basic allowance for quarters; (v) basic allowance for subsistence; and (vi) station per diem allowances for not more than ninety (90) days.

(h) If refund or credit of any overpayment of tax for any taxable year resulting from the application of this subsection (5) is prevented by the operation of any law or rule of law, such refund or credit of such overpayment of tax may, nevertheless, be made or allowed if claim therefor is filed with the Department of Revenue within three (3) years after the date of the enactment of this subsection.

(i) The provisions of this subsection shall be effective for taxable years ending on or after February 28, 1961.

(6) A shareholder of an S corporation, as defined in Section 27-8-3(1)(g), shall take into account the income, loss, deduction or credit of the S corporation only to the extent provided in Section 27-8-7(2).

SOURCES: Codes, 1942, § 9220-08; Laws, 1934, ch. 120; Laws, 1936, ch. 151; Laws, 1940, ch. 123; Laws, 1942, chs. 125, 129; Laws, 1944, ch. 122; Laws, 1948, ch. 464, § 1; Laws, 1952, ch. 402, § 7; Laws, 1954, ch. 366; Laws, 1966, ch. 628, § 2; Laws, 1973, ch. 504, § 1; Laws, 1978, ch. 475, § 1; Laws, 1982, ch. 489, § 1; Laws, 1984, ch. 393, § 8; Laws, 1986, ch. 393, § 1; Laws, 1986, ch. 513, § 8; brought forward without change, Laws, 1987, ch. 345, § 8; Laws, 1987, ch. 423, § 1; Laws, 1990, ch. 523, § 5; Laws, 1993, ch. 377, § 1; Laws, 1993, ch. 456, § 13; Laws, 1993, ch. 523, § 1; Laws, 1994, ch. 468, § 6; Laws, 1997, ch. 606, § 8; Laws, 1998, ch. 448, § 1; Laws, 1999, ch. 446, § 1; Laws, 2000, ch. 473, § 16; Laws, 2001, ch. 452, § 2; Laws, 2001, ch. 586, § 2; Laws, 2002, ch. 516, § 2; Laws, 2003, ch. 319, § 2; Laws, 2004, ch. 500, § 1; Laws, 2005, ch. 443, § 1; Laws, 2005, ch. 484, § 6; Laws, 2005, 5th Ex Sess, ch. 22, § 1; Laws, 2006, ch. 497, § 1; Laws, 2007, ch. 443, § 1; Laws, 2008, ch. 489, § 1; Laws, 2009, ch. 349, § 1; Laws, 2010, ch. 430, § 1; Laws, 2015, ch. 420, § 6; Laws, 2015, ch. 457, § 5; Laws, 2017, ch. 350, § 15; Laws, 2017, ch. 376, § 3, eff from and after March 20, 2017.

Joint Legislative Committee Note — Section 2 of ch. 452, Laws of 2001, effective January 1, 2002, amended this section. Section 2 of ch. 586, Laws of 2001, effective January 1, 2001, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the April 26, 2001, meeting of the Committee.

Section 1 of ch. 443, Laws of 2005, effective from and after January 1, 2005 (approved March 23, 2005), amended this section. Section 6 of ch. 484, Laws of 2005, effective from and after January 1, 2005 (approved April 6, 2005), also amended this section. As set out above, this section reflects the language of Section 6 of ch. 484, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 6 of ch. 420, Laws of 2015, effective upon passage (approved March 29, 2015), amended this section. Section 5 of ch. 457, Laws of 2015, effective from and after January 1, 2015 (approved April 20, 2015), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 17, 2015, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (5)(h), as amended by Laws of 2015, ch. 420, and Laws of 2015, ch. 457. The reference to “subsection (5) of this section” was changed to “this subsection (5).” The Joint Committee ratified the correction at its August 5, 2016, meeting.

Section 3 of Chapter 376, Laws of 2017, effective from and after January 1, 2017 (approved March 22, 2017), amended this section. Section 15 of Chapter 350, Laws of 2017, effective from and after passage (approved March 20, 2017), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 15, 2017, meeting of the Committee.

Editor's Note — Laws of 2000, ch. 473, § 22, effective July 1, 2000, provides:

“SECTION 22. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which Sections 16 through 18 of this act become effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which Sections 16 through 18 of this act become effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which Sections 16 through 18 of this act become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.”

Laws of 2001, ch. 586, §§ 8, 9, effective January 1, 2001, provide as follows:

“SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

“SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act.”

Laws of 2004, ch. 500, § 2, effective January 1, 2004, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2005, ch. 443, § 2, effective January 1, 2005, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2006, ch. 497, § 2, effective January 1, 2006, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2007, ch. 443, § 2, effective January 1, 2007, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2010, ch. 430, § 2 effective January 1, 2010, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

The Federal Farm Loan Act of July 17, 1916, referred to in this section, was repealed by 12 USCS § 2001 et seq., P.L. 92-181, 85 Stat. 583, which represented a complete rewriting of the farm credit laws and a fundamental reworking of the statutory basis for the farm credit system. In connection with such reworking of material, the existing statutory provisions covering this area were repealed and their substance revised, reenacted, and expanded. The repealed provisions constituted the bulk of former

Chapter 7, 12 USCS § 636 et seq. The repealed statutes, including the Federal Farm Loan Act, are enumerated at P.L. 92-181 § 5.26(a), 85 Stat. 641.

Executive Order No. 13002 of May 13, 1996, designated June 30, 1996, as the date of termination of combatant activities in the zone comprised of Vietnam and the waters adjacent, as described in Executive Order No. 11216 of April 24, 1965.

Laws of 2017, ch. 376, § 5, effective January 1, 2017, provides:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The first 2017 amendment (ch. 350), effective March 20, 2017, added (4)(ii).

The second 2017 amendment (ch. 376), effective January 1, 2017, inserted "(1)" in (2)(f); and added (4)(jj).

Cross References — Mississippi Public Employees' Retirement System generally, see § 25-11-101 et seq.

Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Mississippi Highway Safety Patrol Retirement System generally, see § 25-13-1 et seq.

Creation of public employer-assisted housing program authorized, see § 25-19-1.

Alimony payments as adjustments to gross income, see § 27-7-18.

Calculation of gross income of S corporation shareholders, see § 27-8-7.

Treatment of stock or money distributions by S corporations to resident shareholders, see § 27-8-17.

Exemption of airport income from tax, see §§ 61-3-77, 61-5-43.

Mississippi Soil and Water Cost-Share Program generally, see §§ 69-27-301 through 69-27-315.

Principal contributed and the interest earned on medical savings account excluded from taxable income under this section, see § 71-9-5.

Mississippi Gaming Control Act, see § 75-76-1 et seq.

Federal Aspects — Federal Civil Service Retirement Act, see 5 USCS § 8331 et seq.

Internal Revenue Code of 1986 generally, see 26 USCS § 1 et seq.

Installment Tax Correction Act of 2000, P.L. 106-573, 114 Stat. 3061, appears in a note under 26 USCS § 1.

"Qualified Hurricane Katrina distribution" defined, Katrina Emergency Tax Relief Act of 2005, P.L. 109-73, 119 Stat. 2016, see 26 USCS § 1 note.

Social Security Act, see 42 USCS § 301 et seq.

Railroad Retirement Act appears generally as 45 USCS § 231 et seq.

War Risk Insurance Act, see 46 App. USCS § 1281 et seq.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.
3. What constitutes taxable income.
4. Exemptions.

1. In general.

"Gross income," imports an actual gain and indicates an increase of wealth in hand. Mississippi State Tax Comm'n v. Hogg, 239 Miss. 597, 124 So. 2d 300 (1960).

A taxing statute will be strictly construed against the taxing power and in favor of the taxpayer, and all doubts as to whether or not a tax has been imposed must be resolved in favor of the taxpayer. State v. Johnson, 238 Miss. 211, 118 So. 2d 308 (1960).

The word "property" as used in subsection (a) of this section, applying where property is sold upon the deferred payment plan, is not limited to tangible property. State v. Johnson, 238 Miss. 211, 118 So. 2d 308 (1960).

An administrative interpretation of income tax statute to effect that it did not impose tax on gains realized from capital transactions could not be considered in determining whether gross income within statute included profits on sales of property not regularly employed in conduct of regular trade or business, where the administrative interpretation was in conflict with statute and the commission making the interpretation had not adhered to such interpretation. Virden v. State Tax Comm'n, 180 Miss. 467, 177 So. 784 (1938).

The subsequent amendment of income tax statute could not be considered in determining whether under original statute gross income included profits on sales of property not regularly employed in conduct of regular trade or business, where original statute was not ambiguous. Virden v. State Tax Comm'n, 180 Miss. 467, 177 So. 784 (1938).

Including income from sources outside the state in determining a citizen's taxable income while excluding it in determining the taxable income of domestic corporations does not deny to a citizen the equal protection of the laws where there is nothing to negative the possible existence of just grounds of difference and it appears that the state has adopted generally a policy of avoiding double taxation of the same economic interest in corporate income by taxing either income of the corporation or dividends of its stockholders, but not both, and in the case of corporate income and dividends attributable to business done outside the state and received by stockholders of domestic corporations, the stockholders are taxed. Lawrence v. State Tax Comm'n, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).

2. Particular applications.

Where the entire business of a Mississippi corporation consisted of assembling component parts to be used by the New Jersey corporation which owned all of its outstanding stock, the statutory basis for income taxes of the Mississippi corporation was its gross income, and its gross income was the true value of the services it performed for the New Jersey corporation; The Tax Commission could not lawfully substitute for the statutory method of determining gross income an apportionment formula that included the income of the New Jersey corporation, and that portion of a tax regulation authorizing the commissioner to consolidate the income of a resident corporation with that of an affiliated foreign corporation and apply an apportionment formula for income tax purposes is void. Universal Mfg. Corp. v. Brady, 320 So. 2d 784 (Miss. 1975).

Where an installment sale of real estate is made, installments of trust deed indebtedness assumed by the purchaser maturing subsequent to the year of sale are not to be considered in determining whether the initial payment exceeds 30 percent. State Tax Comm'n v. Edmondson, 196 So. 2d 873 (Miss. 1967).

To determine whether the initial payment received in connection with an installment sale of real estate exceeds 30 percent, only the sum paid in cash plus any trust deed indebtedness assumed by the purchaser which matures in the year of the sale are to be included. State Tax Comm'n v. Edmondson, 196 So. 2d 873 (Miss. 1967).

A pro rata distribution to stockholders of a corporation of stock in another corporation acquired by it in exchange for assets, does not constitute taxable income. Mississippi State Tax Comm'n v. Hogg, 239 Miss. 597, 124 So. 2d 300 (1960).

Where a taxpayer, who had received 10 installment promissory notes representing part of the purchase price from him of certain shares of stock, exercised his option to pay income tax on gains received in the years in which the deferred payments were received by him, and subsequently taxpayer transferred these notes in a bona fide transaction to a merchandise corporation in which he was a principal stockholder, for purpose of enabling indorsee to use notes as collateral in its business, with the taxpayer receiving in return, and as consideration for the transfer, substantially identical notes of the corporation payable to him in installments, taxpayer retained the privilege to report his taxable gain under the new installment notes on the deferred payment basis. State v. Johnson, 238 Miss. 211, 118 So. 2d 308 (1960).

3. What constitutes taxable income.

Miss. Code Ann. § 27-7-15(4)(i), having been found to violate the dormant commerce clause under the internal consistency test, was modified by striking the phrase "under the provisions of this article" because this preserved legislative intent to include dividend income in the definition of income, while allowing an exemption to taxpayers who already had borne a tax in Mississippi or another state. Miss. Dep't of Revenue v. AT&T Corp., 202 So. 3d 1207 (Miss. 2016).

Miss. Code Ann. § 27-7-15(4)(i) violated the dormant commerce clause under the internal consistency test because a taxpayer's dividend income from in-state subsidiaries was excluded from income, while such income from out-of-state subsidiaries was not, as the income had not already borne a tax under the statute, resulting in malapportionment. Miss. Dep't of Revenue v. AT&T Corp., 202 So. 3d 1207 (Miss. 2016).

This income tax law will not be construed as taxing income from national bank shares where it was enacted at a time when the view prevailing in the Supreme Court of the United States was that instrumentalities of the United States could not be taxed by the state on income. Mississippi State Tax Comm'n v. Brown, 188 Miss. 483, 193 So. 794, 127 A.L.R. 919 (1940), error overruled, 188 Miss. 516, 195 So. 465, 127 A.L.R. 919 (1940).

Election by state to tax the shares of national banks according to their value as permitted under Act of Congress (12 USCS § 548) exhausted its right to tax such bank, or its shares, or the income therefrom; and, accordingly, the state legislature did not intend, under the Income Tax Act of 1934, to tax the income dividends derived from such shares. Mississippi State Tax Comm'n v. Brown, 188 Miss. 483, 193 So. 794, 127 A.L.R. 919 (1940), error overruled, 188 Miss. 516, 195 So. 465, 127 A.L.R. 919 (1940).

Money received in a business transaction which the taxpayer has no right to retain but must return is not income within the purview of this section. [Code 1942, § 9227], since his income from the business is neither increased nor diminished thereby. State v. Morgan Gin Co., 186 Miss. 66, 189 So. 817 (1939).

Refunds or payments by a ginning company to its patrons, under an agreement that if they would pay its charges for ginning their cotton and accept payment for their cotton seed at prices offered by it therefor, it would thereafter make an equitable adjustment of such prices and charges and pay them additional money for the cotton seed purchased from them, construed by both parties to be an agreement by the ginning company to do for all its patrons what under its charter it was required to do for its patrons who owned its corporate stock, were not a part of the ginning company's gross income and therefore included in the taxable income of the corporation. State v. Morgan Gin Co., 186 Miss. 66, 189 So. 817 (1939).

A taxpayer's "gross income" included profits on sales of property not regularly employed in conduct of regular trade or business where income tax statute was broad enough to include profits on sales of all property in gross income, notwithstanding statute contained provisions for determining gains realized or losses sustained from disposition of assets employed in conduct of regular trade or business but not for determining gains or losses sustained on sales of property not employed in trade or business, since provisions for determining gains or losses were not in conflict with legislative intent clearly expressed in preceding provisions that profits on sales of all property should be included in gross income. Virden v. State Tax Comm'n, 180 Miss. 467, 177 So. 784 (1938).

One who retained rental of land received under Agricultural Adjustment Act, after discovery that receipt thereof was illegal, was subject to state income tax with respect to such rental, against contention that he was liable to suit to recover it. Chapman v. State, 179 Miss. 507, 176 So. 391 (1937).

The state income tax statute would not be inoperative against rentals of land received under Agricultural Adjustment Act, as taxing government instrumentality, since Agricultural Adjustment Act has been declared unconstitutional and void. Chapman v. State, 179 Miss. 507, 176 So. 391 (1937).

Increase in value of property, accruing over period of years, may be taxed as "income" of year in which it is converted into money or other property. Fernwood Lumber Co. v. Mississippi State Tax Comm'n, 167 Miss. 273, 149 So. 727 (1933).

Income earned by citizen and resident of state, whether earned within or without state, is subject to tax. Lawrence v. Mississippi State Tax Comm'n, 162 Miss. 338, 137 So. 503 (1931), aff'd, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102, 87 A.L.R. 374 (1932).

"Income" is gain derived from capital, from labor, or from both combined. Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34, 88 So. 4, 25 A.L.R. 748 (1921), error overruled, 126 Miss. 655, 89 So. 369 (1921), error dismissed, 260 U.S. 710, 43 S. Ct. 249, 67 L. Ed. 475 (1923).

4. Exemptions.

Rental of land received under Agricultural Adjustment Act was not exempt from state income tax as a "gift," since gift by government must be authorized by valid Act of Congress. Chapman v. State, 179 Miss. 507, 176 So. 391 (1937).

Rental of land received under Agricultural Adjustment Act was a "gain" or "income" from land and not "other compensation received from United States government" so as to be exempt from state income tax within terms of former statute exempting salaries, wages and other compensation received from the United States government. Chapman v. State, 179 Miss. 507, 176 So. 391 (1937).

The salary of a vice-president of a federal land bank is not exempt from state income tax, since federal land banks, though federal instrumentalities, were established primarily to make loans on farm lands, are operated in part for profit, and private investors may own their stock. Parker v. Mississippi State Tax Comm'n, 178 Miss. 680, 174 So. 567 (1937), cert. denied, 302 U.S. 742, 58 S. Ct. 144, 82 L. Ed. 574 (1937).

That profit or gain is evidenced by something which is property taxable as such does not render it exempt from taxation as "income." Fernwood Lumber Co. v. Mississippi State Tax Comm'n, 167 Miss. 273, 149 So. 727 (1933).

ATTORNEY GENERAL OPINIONS

Interest paid by school district on loan to purchase transportation equipment will be exempt from state income tax. Conley, August 12, 1992, A.G. Op. #92-0581.

RESEARCH REFERENCES

ALR. Income taxes: taxpayer's reliance on doctrine of constructive receipt to defeat assertion of tax in later year. 7 A.L.R.2d 735.

Premiums paid by employer for insurance or annuity payable to employee as taxable income of latter. 7 A.L.R.2d 766.

Income tax: cancelation of debt upon payment of less than amount due, or purchase by debtor of own obligation at a discount, as creating taxable income. 7 A.L.R.2d 871.

Tips as taxable income. 10 A.L.R.2d 191.

Income of subsidiary as taxable to it or to parent corporation. 10 A.L.R.2d 576.

Income tax: market value as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss. 12 A.L.R.2d 589.

Income tax consequences to shareholder of dividend in kind. 56 A.L.R.2d 474.

When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for exempt purposes under Internal Revenue Code. 69 A.L.R.2d 871.

Payment of premiums by corporation on

policy on life of stockholder as taxable income to the insured. 73 A.L.R.2d 708.

Exclusion of meals and lodging from gross income under "convenience of the employer" rule. 84 A.L.R.2d 1215.

State tax on trust income as affected by foreign elements. 5 A.L.R.3d 606.

Federal income tax charitable deductions: property fair-market-value determinations. 90 A.L.R. Fed. 402.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 390 et seq.

CJS. 85 C.J.S., Taxation §§ 1998, 1999 et seq.

§ 27-7-16. Gross income; treatment of employees' pension trusts, tax-sheltered annuities, deferred compensation plans, self-employed retirement plans, and individual retirement accounts or retirement bonds.

Amounts contributed in the taxable year by employees and/or self-employed individuals, including partners, to an employees' pension trust, tax-sheltered annuity plan, authorized deferred compensation plan, self-employed retirement plan, individual retirement account or retirement bond which meets the requirements of a qualified plan under the provisions of the Internal Revenue Code of 1986, as amended, shall be deductible from gross income, subject to the conditions and limitations of the Internal Revenue Code of 1986, as amended. Amounts contributed in the taxable year to a Roth individual retirement account shall be treated in the same manner as provided under the Internal Revenue Code of 1986, as amended.

SOURCES: Laws, 1977, ch. 402, §§ 1, 2; Laws, 1979, ch. 302, § 4; Laws, 1986, ch. 393, § 3; Laws, 1987, ch. 423, § 2; Laws, 1991, ch. 524, § 11; Laws, 1995, ch. 346, § 1; Laws, 1998, ch. 448, § 2, eff from and after January 1, 1998.

Editor's Note — Laws of 1998, ch. 448, § 3, effective January 1, 1998, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Federal Aspects — Internal Revenue Code of 1986 generally, see 26 USCS §§ 1 et seq.

RESEARCH REFERENCES

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds, §§ 1-3, 136-176, 236, 1143.

71 Am. Jur. 2d, State and Local Taxation, §§ 412, 413 (annuities, pensions and similar retirement benefits).

Am Jur Legal Forms 2d, Federal Tax Guide to Legal Forms, § 133B.

CJS. 85 C.J.S., Taxation, §§ 2022-2025.

§ 27-7-17. Deductions allowed.

In computing taxable income, there shall be allowed as deductions:

(1) **Business deductions.**

(a) **Business expenses.** All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; nonreimbursable traveling expenses incident to current employment, including a reasonable amount expended for meals and lodging while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition of the continued use or possession, for purposes of the trade or business of property to which the taxpayer has not taken or is not taking title or in which he had no equity. Expense incurred in connection with earning and distributing nontaxable income is not an allowable deduction. Limitations on entertainment expenses shall conform to the provisions of the Internal Revenue Code of 1986.

(b) **Interest.** All interest paid or accrued during the taxable year on business indebtedness, except interest upon the indebtedness for the purchase of tax-free bonds, or any stocks, the dividends from which are nontaxable under the provisions of this article; provided, however, in the case of securities dealers, interest payments or accruals on loans, the proceeds of which are used to purchase tax-exempt securities, shall be deductible if income from otherwise tax-free securities is reported as income. Investment interest expense shall be limited to investment income. Interest expense incurred for the purchase of treasury stock, to pay dividends, or incurred as a result of an undercapitalized affiliated corporation may not be deducted unless an ordinary and necessary business purpose can be established to the satisfaction of the commissioner. For the purposes of this paragraph, the phrase "interest upon the indebtedness for the purchase of tax-free bonds" applies only to the indebtedness incurred for the purpose of directly purchasing tax-free bonds and does not apply to any other indebtedness incurred in the regular course of the taxpayer's business. Any corporation, association, organization or other entity taxable under Section 27-7-23(c) shall allocate interest expense as provided in Section 27-7-23(c)(3)(I).

(c) **Taxes.** Taxes paid or accrued within the taxable year, except state and federal income taxes, excise taxes based on or measured by net income, estate and inheritance taxes, gift taxes, cigar and cigarette taxes, gasoline taxes, and sales and use taxes unless incurred as an item of expense in a trade or business or in the production of taxable income. In the case of an individual, taxes permitted as an itemized deduction under the provisions of subsection(3)(a) of this section are to be claimed thereunder.

(d) **Business losses.**

(i) Losses sustained during the taxable year not compensated for by insurance or otherwise, if incurred in trade or business, or nonbusiness transactions entered into for profit.

(ii) Limitations on losses from passive activities and rental real estate shall conform to the provisions of the Internal Revenue Code of 1986.

(e) **Bad debts.** Losses from debts ascertained to be worthless and charged off during the taxable year, if sustained in the conduct of the regular trade or business of the taxpayer; provided, that such losses shall be allowed only when the taxpayer has reported as income, on the accrual basis, the amount of such debt or account.

(f) **Depreciation.** A reasonable allowance for exhaustion, wear and tear of property used in the trade or business, or rental property, and depreciation upon buildings based upon their reasonable value as of March 16, 1912, if acquired prior thereto, and upon cost if acquired subsequent to that date.

(g) **Depletion.** In the case of mines, oil and gas wells, other natural deposits and timber, a reasonable allowance for depletion and for depreciation of improvements, based upon cost, including cost of development, not otherwise deducted, or fair market value as of March 16, 1912, if acquired prior to that date, such allowance to be made upon regulations prescribed by the commissioner, with the approval of the Governor.

(h) **Contributions or gifts.** Except as otherwise provided in paragraph (p) of this subsection or subsection (3)(a) of this section for individuals, contributions or gifts made by corporations within the taxable year to corporations, organizations, associations or institutions, including Community Chest funds, foundations and trusts created solely and exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inure to the benefit of any private stockholder or individual. This deduction shall be allowed in an amount not to exceed twenty percent (20%) of the net income. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the commissioner, with the approval of the Governor. Contributions made in any form other than cash shall be allowed as a deduction, subject to the limitations herein provided, in an amount equal to the actual market value of the contributions at the time the contribution is actually made and consummated.

(i) **Reserve funds — insurance companies.** In the case of insurance companies the net additions required by law to be made within the taxable year to reserve funds when such reserve funds are maintained for the purpose of liquidating policies at maturity.

(j) **Annuity income.** The sums, other than dividends, paid within the taxpayer year on policy or annuity contracts when such income has been included in gross income.

(k) **Contributions to employee pension plans.** Contributions made by an employer to a plan or a trust forming part of a pension plan, stock bonus plan, disability or death-benefit plan, or profit-sharing plan of such employer for the exclusive benefit of some or all of his, their, or its employees, or their beneficiaries, shall be deductible from his, their, or its income only to the extent that, and for the taxable year in which, the contribution is deductible for federal income tax purposes under the Internal Revenue Code of 1986 and any other provisions of similar purport in the Internal Revenue Laws of the United States, and the rules, regulations, rulings and determinations promulgated thereunder, provided that:

(i) The plan or trust be irrevocable.

(ii) The plan or trust constitute a part of a pension plan, stock bonus plan, disability or death-benefit plan, or profit-sharing plan for the exclusive benefit of some or all of the employer's employees and/or officers, or their beneficiaries, for the purpose of distributing the corpus and income of the plan or trust to such employees and/or officers, or their beneficiaries.

(iii) No part of the corpus or income of the plan or trust can be used for purposes other than for the exclusive benefit of employees and/or officers, or their beneficiaries.

Contributions to all plans or to all trusts of real or personal property (or real and personal property combined) or to insured plans created under a retirement plan for which provision has been made under the laws of the United States of America, making such contributions deductible from income for federal income tax purposes, shall be deductible only to the same extent under the Income Tax Laws of the State of Mississippi.

(*l*) **Net operating loss carrybacks and carryovers.** A net operating loss for any taxable year ending after December 31, 1993, and taxable years thereafter, shall be a net operating loss carryback to each of the three (3) taxable years preceding the taxable year of the loss. If the net operating loss for any taxable year is not exhausted by carrybacks to the three (3) taxable years preceding the taxable year of the loss, then there shall be a net operating loss carryover to each of the fifteen (15) taxable years following the taxable year of the loss beginning with any taxable year after December 31, 1991.

For any taxable year ending after December 31, 1997, the period for net operating loss carrybacks and net operating loss carryovers shall be the same as those established by the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder as in effect at the taxable year end or on December 31, 2000, whichever is earlier.

A net operating loss for any taxable year ending after December 31, 2001, and taxable years thereafter, shall be a net operating loss carryback to each of the two (2) taxable years preceding the taxable year of the loss. If the net operating loss for any taxable year is not exhausted by carrybacks to the two (2) taxable years preceding the taxable year of the loss, then there shall be a net operating loss carryover to each of the twenty (20) taxable years following the taxable year of the loss beginning with any taxable year after the taxable year of the loss.

The term "net operating loss," for the purposes of this paragraph, shall be the excess of the deductions allowed over the gross income; provided, however, the following deductions shall not be allowed in computing same:

(i) No net operating loss deduction shall be allowed.

(ii) No personal exemption deduction shall be allowed.

(iii) Allowable deductions which are not attributable to taxpayer's trade or business shall be allowed only to the extent of the amount of gross income not derived from such trade or business.

Any taxpayer entitled to a carryback period as provided by this paragraph may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year ending after December 31, 1991. The election shall be made in the manner prescribed by the Department of Revenue and shall be made by the due date, including extensions of time, for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. The election, once made for any taxable year, shall be irrevocable for that taxable year.

(m) **Amortization of pollution or environmental control facilities.** Allowance of deduction. Every taxpayer, at his election, shall be entitled to a deduction for pollution or environmental control facilities to the same extent as that allowed under the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder.

(n) **Dividend distributions — real estate investment trusts.** "Real estate investment trust" (hereinafter referred to as REIT) shall have the meaning ascribed to such term in Section 856 of the federal Internal Revenue Code of 1986, as amended. A REIT is allowed a dividend distributed deduction if the dividend distributions meet the requirements of Section 857 or are otherwise deductible under Section 858 or 860, federal Internal Revenue Code of 1986, as amended. In addition:

(i) A dividend distributed deduction shall only be allowed for dividends paid by a publicly traded REIT. A qualified REIT subsidiary shall be allowed a dividend distributed deduction if its owner is a publicly traded REIT.

(ii) Income generated from real estate contributed or sold to a REIT by a shareholder or related party shall not give rise to a dividend distributed deduction, unless the shareholder or related party would have received the dividend distributed deduction under this chapter.

(iii) A holding corporation receiving a dividend from a REIT shall not be allowed the deduction in Section 27-7-15(4)(t).

(iv) Any REIT not allowed the dividend distributed deduction in the federal Internal Revenue Code of 1986, as amended, shall not be allowed a dividend distributed deduction under this chapter.

The commissioner is authorized to promulgate rules and regulations consistent with the provisions in Section 269 of the federal Internal

Revenue Code of 1986, as amended, so as to prevent the evasion or avoidance of state income tax.

(o) **Contributions to college savings trust fund accounts.** Contributions or payments to a Mississippi Affordable College Savings Program account are deductible as provided under Section 37-155-113. Payments made under a prepaid tuition contract entered into under the Mississippi Prepaid Affordable College Tuition Program are deductible as provided under Section 37-155-17.

(p) **Contributions of human pharmaceutical products.** To the extent that a "major supplier" as defined in Section 27-13-13(2)(d) contributes human pharmaceutical products in excess of Two Hundred Fifty Million Dollars ($250,000,000.00) as determined under Section 170 of the Internal Revenue Code, the charitable contribution limitation associated with those donations shall follow the federal limitation but cannot result in the Mississippi net income being reduced below zero.

(q) **Contributions to ABLE trust fund accounts.** Contributions or payments to a Mississippi Achieving a Better Life Experience (ABLE) Program account are deductible as provided under Section 43-28-13.

(2) **Restrictions on the deductibility of certain intangible expenses and interest expenses with a related member.**

(a) As used in this subsection (2):

(i) "Intangible expenses and costs" include:

1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income under this chapter;

2. Expenses or losses related to or incurred in connection directly or indirectly with factoring transactions or discounting transactions;

3. Royalty, patent, technical and copyright fees;

4. Licensing fees; and

5. Other similar expenses and costs.

(ii) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, copyrights and similar types of intangible assets.

(iii) "Interest expenses and cost" means amounts directly or indirectly allowed as deductions for purposes of determining taxable income under this chapter to the extent such interest expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property.

(iv) "Related member" means an entity or person that, with respect to the taxpayer during all or any portion of the taxable year, is a related entity, a component member as defined in the Internal Revenue Code, or is an entity or a person to or from whom there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code.

(v) "Related entity" means:

1. A stockholder who is an individual or a member of the stockholder's family, as defined in regulations prescribed by the commissioner, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own, directly, indirectly, beneficially or constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

3. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least fifty percent (50%) of the value of the corporation's outstanding stock under regulation prescribed by the commissioner;

4. Any entity or person which would be a related member under this section if the taxpayer were considered a corporation for purposes of this section.

(b) In computing net income, a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued to or incurred, in connection directly or indirectly with one or more direct or indirect transactions with one or more related members.

(c) The adjustments required by this subsection shall not apply to such portion of interest expenses and costs and intangible expenses and costs that the taxpayer can establish meets one (1) of the following:

(i) The related member directly or indirectly paid, accrued or incurred such portion to a person during the same income year who is not a related member; or

(ii) The transaction giving rise to the interest expenses and costs or intangible expenses and costs between the taxpayer and related member was done primarily for a valid business purpose other than the avoidance of taxes, and the related member is not primarily engaged in the acquisition, use, maintenance or management, ownership, sale, exchange or any other disposition of intangible property.

(d) Nothing in this subsection shall require a taxpayer to add to its net income more than once any amount of interest expenses and costs or intangible expenses and costs that the taxpayer pays, accrues or incurs to a related member.

(e) The commissioner may prescribe such regulations as necessary or appropriate to carry out the purposes of this subsection, including, but not limited to, clarifying definitions of terms, rules of stock attribution, factoring and discount transactions.

(3) **Individual nonbusiness deductions.**

(a) The amount allowable for individual nonbusiness itemized deductions for federal income tax purposes where the individual is eligible to elect, for the taxable year, to itemize deductions on his federal return except the following:

(i) The deduction for state income taxes paid or other taxes allowed for federal purposes in lieu of state income taxes paid;

(ii) The deduction for gaming losses from gaming establishments;

(iii) The deduction for taxes collected by licensed gaming establishments pursuant to Section 27-7-901;

(iv) The deduction for taxes collected by gaming establishments pursuant to Section 27-7-903.

(b) In lieu of the individual nonbusiness itemized deductions authorized in paragraph (a), for all purposes other than ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, an optional standard deduction of:

(i) Three Thousand Four Hundred Dollars ($3,400.00) through calendar year 1997, Four Thousand Two Hundred Dollars ($4,200.00) for the calendar year 1998 and Four Thousand Six Hundred Dollars ($4,600.00) for each calendar year thereafter in the case of married individuals filing a joint or combined return;

(ii) One Thousand Seven Hundred Dollars ($1,700.00) through calendar year 1997, Two Thousand One Hundred Dollars ($2,100.00) for the calendar year 1998 and Two Thousand Three Hundred Dollars ($2,300.00) for each calendar year thereafter in the case of married individuals filing separate returns;

(iii) Three Thousand Four Hundred Dollars ($3,400.00) in the case of a head of family; or

(iv) Two Thousand Three Hundred Dollars ($2,300.00) in the case of an individual who is not married.

In the case of a husband and wife living together, having separate incomes, and filing combined returns, the standard deduction authorized may be divided in any manner they choose. In the case of separate returns by a husband and wife, the standard deduction shall not be allowed to either if the taxable income of one of the spouses is determined without regard to the standard deduction.

(c) A nonresident individual shall be allowed the same individual nonbusiness deductions as are authorized for resident individuals in paragraph (a) or (b) of this subsection; however, the nonresident individual is entitled only to that proportion of the individual nonbusiness deductions as his net income from sources within the State of Mississippi bears to his total or entire net income from all sources.

(4) Nothing in this section shall permit the same item to be deducted more than once, either in fact or in effect.

SOURCES: Codes, 1942, § 9220-09; Laws, 1934, ch. 120; Laws, 1936, ch. 151; Laws, 1942, ch. 134; Laws, 1946, ch. 282; Laws, 1948, ch. 437, § 1; Laws, 1952, ch. 402, § 8; Laws, 1956, ch. 427; Laws, 1966, ch. 628, § 3; Laws, 1973, ch. 504, § 2; Laws, 1978, ch. 475, § 2; Laws, 1979, ch. 302, § 2; Laws, 1985, ch. 411, § 1; Laws, 1987, ch. 356, § 1; Laws, 1987, ch. 423, § 3; Laws, 1989, ch. 485, § 2; Laws, 1991, ch. 524, § 9; Laws, 1992, ch. 419, § 1; Laws, 1996, ch. 441, § 67; Laws, 1997, ch. 304, § 1; Laws, 1998, ch. 543, § 2; Laws, 2000, ch. 473, § 17; Laws, 2000, ch. 505, § 1; Laws, 2001, ch. 452, § 3; Laws, 2001, ch. 586, § 3; Laws, 2002, ch. 477, § 1; Laws, 2002, ch. 516, § 3; Laws, 2003, ch. 319, § 3; Laws, 2005, ch. 465, § 1; Laws, 2011, ch. 537, § 2; Laws, 2017, ch. 350, § 16, eff from and after passage (approved Mar. 20, 2017.)

Joint Legislative Committee Note — Section 17 of ch. 473, Laws of 2000, effective January 1, 2000, amended this section. Section 1 of ch. 505, Laws of 2000, effective January 1, 2000, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the Legislative intent at the June 29, 2000, meeting of the Committee.

Section 3 of ch. 452, Laws of 2001, effective January 1, 2002, amended this section. Section 3 of ch. 586, Laws of 2001, effective January 1, 2001, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the April 26, 2001, meeting of the Committee.

Section 1 of ch. 477, Laws of 2002, effective January 1, 2002 (approved March 27, 2002), amended this section. Section 3 of ch. 516, Laws of 2002, effective January 1, 2002 (approved April 1, 2002), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 516, Laws of 2002, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2011, ch. 537, § 3, provides:

"SECTION 3. Section 1 of this act shall take effect and be in force from and after its passage [April 26, 2011] and Section 2 of this act shall take effect and be in force from and after January 1, 2011."

Laws of 2000, ch. 473, § 22, effective July 1, 2000, provides:

"SECTION 22. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which Sections 16 through 18 of this act become effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which Sections 16 through 18 of this act become effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which Sections 16 through 18 of this act become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2001, ch. 586, §§ 8, 9, effective January 1, 2001, provide as follows:

"SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

"SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act."

Amendment Notes — The 2017 amendment, effective March 20, 2017, added (1)(q).

Cross References — Adjusted basis for determining gain from sale if a deduction is allowed under this section, see § 27-7-9.

Applicability of three-year period for examination of returns provided under § 27-7-49 where reportable taxable income of taxpayer has been decreased by carryback of net operating loss deduction under this section, see § 27-7-49.

Treatment, for purposes of capital gains tax, of property used in trade or business, see § 27-7-99.

Creation of Commission on Environmental Quality, see § 49-2-1 et seq.

Mississippi Air and Water Pollution Control Commission, see § 49-17-7.

Money withdrawn from medical savings account considered gross income as provided in this section, see § 71-9-9.

Provision that income of an investment trust shall be taxed as if the investment trust were a business corporation with the exception of the dividend deduction allowed by this section, see § 79-15-25.

Federal Aspects — Tax treatment of depreciation in rented real estate under the Internal Revenue Code of 1986, see 26 USCS §§ 167(k), 1250(b).

Internal Revenue Code of 1986 concerning limitations on entertainment expenses, see 26 USCS § 274.

Tax treatment of employer contributions to employee pension, stock bonus or similar plans under the Internal Revenue Code of 1986, see 26 USCS §§ 401-404.

Internal Revenue Code of 1986 concerning limitations on losses from passive activities, see 26 USCS § 469.

Sections 170, 857, 858, 860 and 1563 of the Internal Revenue Code of 1986, see 26 USCS §§ 170, 857, 858, 860 and 1563.

JUDICIAL DECISIONS

1. In general.
2. Particular deductions.

1. In general.

No exact definition exists for the term "ordinary and necessary" as set forth in § 27-7-17(a); each case must be determined on the basis of its own facts and circumstances. Ordinarily, the separate corporate identities of corporate subsidiaries preclude the parent corporation from deducting expenses incurred or losses sustained by its subsidiary, pursuant to the theory that payment by the parent to cover expenses or losses of the subsidiary is related to the business of the subsidiary and not to its own business. However, expenditures made by a parent corporation, which would be deductible if made by the subsidiary, are similarly deductible by the parent corporation, where they are directly related to the parent corporation's business. Thus, expenditures made by a parent corporation to cover its subsidiaries' deficits were deductible from the parent corporation's income taxes as "ordinary and necessary" business expenses where the expenditures were directly related to the business of the parent corporation. Purcell Co. v. Mississippi State Tax Comm'n, 569 So. 2d 297 (Miss. 1990).

Although it is true that the exemption provisions in tax statutes are strictly construed, nevertheless the full force and effect of such exemptions will be allowed as are provided by statute. Spearman v. Jones, 198 So. 2d 571 (Miss. 1967).

This section and Code 1942, § 9220-10 are in pari materia. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

Deductions from income are not matters of right, but represent statutory grants; and the taxpayer has the burden of proving a right thereto. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

A deduction will not be allowed upon equitable considerations, but only where clearly provided for under the statute. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

2. Particular deductions.

When a taxpayer chose to treat bad debt losses by the bad debt reserve method it was required to base the reserve on a showing of experience as required by the regulations of the state tax commission. Gilchrist Tractor Co. v. Mississippi State Tax Comm'r, 211 So. 2d 550 (Miss. 1968).

Property donated for charitable purposes shall be valued as a deduction for income tax purposes as of the time of such donation and not on the basis of its cost to the taxpayer. Spearman v. Jones, 198 So. 2d 571 (Miss. 1967).

There is no difference between donations of money and donations of property under the provisions of subdivision (i) of this section, and the endeavors of the tax commission to fix the value of property donated at an amount different from its money value at the time of donation is repugnant to the clear meaning of the statute, and therefore inoperative. Spearman v. Jones, 198 So. 2d 571 (Miss. 1967).

A debt of the predecessor partnership assumed by a successor corporation owned by the partners, under a claimed necessity of obtaining future financing, is not deductible as a business expense or loss incurred. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

In determining whether an expense was "necessary", each case must be decided upon its peculiar facts. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

Ordinarily, an expense will be considered "necessary" if the expenditure is appropriate and helpful in developing and maintaining the taxpayer's business, and considerable weight is given to the taxpayer's judgment. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

In determining what is an "ordinary" expense, custom and practice in the business world usually furnish reliable guidance; It is affected by the time, place and circumstances of the particular expenditure, which does not have to be habitual and normal in terms of frequency, if it is not unusual in the group of which the taxpayer is a part. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

A tax commission regulation limiting a deduction for interest paid by a nonresident individual or corporation required to apportion income to the state to any excess over intangible income is invalid as inconsistent with this section. Monaghan v. Reliance Mfg. Co., 236 Miss. 462, 111 So. 2d 225 (1959).

A foreign corporation which had entered the state and had employed therein men who were engaged in the repair of its machines and replacement of parts needed in connection therewith could not complain that it was not permitted to deduct from its gross income the federal taxes paid by it, since the income tax law makes no provision for such deduction by anyone. Stapling Machs. Co. v. Monaghan, 232 Miss. 484, 99 So. 2d 649 (1958), corrected, 232 Miss. 492, 101 So. 2d 359 (1958).

A deduction for depletion and depreciation on oil and gas properties of a dissolved foreign corporation is to be predicated upon the value of its assets as shown by the books of the corporation and not already deducted rather than on the actual fair market value on its entire properties as fixed by a petroleum engineer at the time of its dissolution. Hewgley v. Stone, 200 Miss. 486, 27 So. 2d 693 (1946).

Upon dissolution of a corporation, a stockholder is protected against being charged with a taxable gain through the transfer to him of his share of the corporation's assets at an appreciated value, and likewise he should be denied the privilege of computing a nontaxable loss on the same basis. Urschel v. Stone, 198 Miss. 105, 21 So. 2d 466 (1945).

Net book value of the assets at time of dissolution based on cost to the corporation, rather than the "liquidation value" of such asset, continues to represent the cost of the assets for purposes of computing depletion and depreciation allowances on a stockholder's interest in such assets after dissolution, in determining the stockholder's income tax. Urschel v. Stone, 198 Miss. 105, 21 So. 2d 466 (1945).

In determining the proper basis for allowance of depletion of oil and gas leases acquired by two domestic corporations which transferred all their assets to a new foreign corporation in exchange for stock, whereby the same stockholders and officers who controlled the old corporations controlled the new one, and the value of the leases was claimed to have increased considerably over the original cost, "cost," within meaning of paragraph (8) hereof, was the original cost to the domestic corporations and not the claimed increased cost to the foreign corporation, since the transaction was not a merger but merely a reorganization. State Tax Comm'n v. Love Petro. Co., 197 Miss. 277, 19 So. 2d 923 (1944).

Excess profits taxes paid by corporation to federal government during tax year were "income taxes" within the purview of subsection 3 of Code 1942, § 9228, and therefore not deductible from income tax, notwithstanding that excess profits tax was not in existence when income tax act was enacted. Tri-State Transit Co. v. Stone, 196 Miss. 23, 16 So. 2d 35, 151 A.L.R. 976 (1943), suggestion of error sustained, 196 Miss. 23, 16 So. 2d 782, 151 A.L.R. 976 (1944).

Loss sustained by nonresident, operating Mississippi plantation, on certain contracts made in Tennessee for hedge sales of cotton on the New York cotton exchange and of cotton seed on the Memphis Merchants Exchange, which sales allegedly contemplated an actual future delivery of the products so sold, at the then prevailing market price, which later advanced, was not deductible as an ordinary and necessary expense in carrying on a farming operation. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

Trust fund set aside by manufacturing company for purpose of enabling trustees to make loan to company's employees and for purpose of creating amity, good feeling, cooperation, and good will between company and employees held not deductible, in determining taxable income, as "ordinary and necessary expense" where company created trust just a few days before it was bound to account to state tax commission for income, company reserved right to terminate trust at any time, and company required good security for loans. Tupelo Garment Co. v. State Tax Comm'n, 178 Miss. 730, 173 So. 656 (1937).

Where manufacturing company constructed building at cost of $54,712.20, against which depreciation of $1,765.10 was charged, and sold building to partnership composed of four directors constituting majority of board of directors and two others for $23,000, in determining taxable income, manufacturing company held under a provision omitted from the present statute, entitled to deduct resulting loss, as "loss sustained from disposition of capital assets," since manufacturing company was entirely divested of title to property. Tupelo Garment Co. v. State Tax Comm'n, 178 Miss. 730, 173 So. 656 (1937).

Taxpayer having fiscal year identical with calendar year held entitled to deduct losses incurred during 1928 and 1929 from taxable income for 1930 and 1931 under statute allowing deduction for three years after loss, as against contention that under 1930 revision of taxing statute, which restricted taxpayer having fiscal year different from calendar year to deduction of only such portion of net loss for entire fiscal year 1929 as part of fiscal year falling within calendar year 1930 bore to entire fiscal year, allowance of deduction to taxpayer computing income according to calendar year would be discriminatory. State Tax Comm'n v. Mississippi Power Co., 172 Miss. 659, 160 So. 907 (1935).

That 1924 income tax statute, in directing computation of net income on timber acquired before effective date of 1912 statute, provided fair market value on such date should be taken in lieu of cost, held not to violate constitutional equality clauses, though 1912 statute allegedly permitted taxpayer to be sole judge of value of property, while 1924 statute required computation on actual value. Fernwood Lumber Co. v. Mississippi State Tax Comm'n, 167 Miss. 273, 149 So. 727 (1933).

Provision of 1924 income tax statute that, in computing net "income" on timber acquired before effective date of 1912 statute, fair market value on such date should be taken in lieu of cost, held not to violate constitutional provision respecting taxation of "property." Fernwood Lumber Co. v. Mississippi State Tax Comm'n, 167 Miss. 273, 149 So. 727 (1933).

RESEARCH REFERENCES

ALR. Dividend in kind or stock dividend as affecting corporation's income tax. 7 A.L.R.2d 750.

Right of employer to deduct, for income tax purposes, premiums paid on insurance or annuity contracts for benefit of employees. 9 A.L.R.2d 280.

What constitute amounts received under workmen's compensation acts within exemption provisions of Federal income tax law. 16 A.L.R.2d 1334.

Income tax: Deductibility of amount paid or expense incurred by taxpayer on account of his liability or alleged liability for tort, crime, or statutory violation. 20 A.L.R.2d 600.

Public policy as ground for denying deduction for federal income tax purposes. 27 A.L.R.2d 498.

Federal income tax: right of lessor or his successors to deduction for depreciation, obsolescence, or exhaustion. 40 A.L.R.2d 440.

When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code. 69 A.L.R.2d 871.

Reasonableness of compensation paid to officers or employees, so as to warrant deduction thereof in computing employer's income tax. 10 A.L.R.3d 125.

Construction and application of state corporate income tax statutes allowing net operating loss deductions. 33 A.L.R.5th 509.

State income tax treatment of intangible holding companies. 11 A.L.R.6th 543.

What kinds of legal costs incurred by taxpayer are deductible-current cases. 39 A.L.R. Fed. 221.

Who is public employee under § 7701(a)(26) of Internal Revenue Code of 1954 (26 USCS § 7701(a)(26)), providing that term "trade or business" includes performance of functions of public office. 52 A.L.R. Fed. 395.

Federal income tax charitable deductions: property fair-market-value determinations. 90 A.L.R. Fed. 402.

What constitutes tax-deductible theft loss under 26 USCS § 165. 98 A.L.R. Fed. 229.

What constitutes trade or business under Internal Revenue Code (U.S.C.S. Title 26). 161 A.L.R. Fed. 245.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 422-450 (deductions: business expenses, interest, dividends, taxes, losses, depreciation, depletion, exhaustion, charitable contributions, misc. personal deductions).

15 Am. Jur. Proof of Facts, Tax Deductions for Business, Entertainment, Travel, and Gifts, Proof No. 13 (deductibility of cost of business meal — testimony for taxpayer).

15 Am. Jur. Proof of Facts, Tax Deductions for Business, Entertainment, Travel, and Gifts, Proof No. 14 (deductibility of cost of chartering yacht for business purposes — testimony for taxpayer).

15 Am. Jur. Proof of Facts, Tax Deductions for Business, Entertainment, Travel, and Gifts, Proof No. 15 (deductibility of cost of foreign business trip — testimony for taxpayer).

15 Am. Jur. Proof of Facts, Tax Deductions for Business, Entertainment, Travel, and Gifts, Proof No. 16 (deductibility of cost of business gifts — testimony for taxpayer).

CJS. 85 C.J.S., Taxation §§ 2026-2041.

§ 27-7-18. Adjustments to gross income; alimony payments; unreimbursed moving expenses; payments for medical insurance by self-employed individuals; contributions to MACS program account; unreimbursed expenses related to donation of organ by living donor.

(1) Alimony payments. In the case of a person described in Section 27-7-15(2)(e), there shall be allowed as a deduction from gross income amounts paid as periodic payments to the extent of such amounts as are includible in the gross income of the spouse as provided in Section 27-7-15(2)(e), payment of which is made within the person's taxable year.

(2) Unreimbursed moving expenses incurred after December 31, 1994, are deductible as an adjustment to gross income in accordance with provisions of the United States Internal Revenue Code, and rules, regulations and revenue procedures thereunder relating to moving expenses, not in direct conflict with the provisions of the Mississippi Income Tax Law.

(3) Amounts paid after December 31, 1998, by a self-employed individual for insurance which constitute medical care for the taxpayer, his spouse and dependents, are deductible as an adjustment to gross income in accordance with provisions of the United States Internal Revenue Code, and rules, regulations and revenue procedures thereunder relating to such payments, not in direct conflict with the provisions of the Mississippi Income Tax Law.

(4) Contributions or payments to a Mississippi Affordable College Savings (MACS) Program account are deductible from gross income as provided in Section 37-155-113. Payments made under a prepaid tuition contract entered into under the Mississippi Prepaid Affordable College Tuition Program are deductible as provided in Section 37-155-17.

(5)(a) Unreimbursed travel expenses, lodging expenses and lost wages an individual incurred as a result of, and related to, the donation, while living, of one or more of his or her organs for human organ transplantation, are deductible from gross income. The deduction from gross income authorized by this subsection may be claimed for only once and may not exceed Ten Thousand Dollars ($10,000.00).

(b) As used in this subsection, "organ" means all or part of a liver, pancreas, kidney, intestine, lung or bone marrow.

(6) In the case of a self-employed individual, there shall be allowed as a deduction from gross income an amount equal to:

(a) Seventeen percent (17%) of the federal self-employment taxes imposed on such individual for taxable years ending in calendar year 2017;

(b) Thirty-four percent (34%) of the federal self-employment taxes imposed on such individual for taxable years ending in calendar year 2018; and

(c) Fifty percent (50%) of the federal self-employment taxes imposed on such individual for taxable years ending in calendar year 2019 and thereafter.

(7) Contributions or payments to a Mississippi Achieving a Better Life Experience (ABLE) Program account are deductible from gross income as provided in Section 43-28-13.

SOURCES: Laws, 1979, ch. 302, § 3; Laws, 1986, ch. 393, § 2; Laws, 1987, ch. 423, § 4; Laws, 1991, ch. 524, § 12; Laws, 1995, ch. 346, § 2; Laws, 1999, ch. 423, § 1; Laws, 2000, ch. 473, § 18; Laws, 2006, ch. 463, § 1; Laws, 2016, ch. 499, § 2; Laws, 2017, ch. 350, § 17, eff from and after passage (approved Mar. 20, 2017.)

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean the Department of Revenue.

Laws of 2000, ch. 473, § 22, effective July 1, 2000, provides:

"SECTION 22. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which Sections 16 through 18 of this act become effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which Sections 16 through 18 of this act become effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which Sections 16 through 18 of this act become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment, effective January 1, 2016, added (6).

The 2017 amendment, effective March 20, 2017, added (7).

Cross References — Mississippi Income Tax Law provisions, see § 27-7-1 et seq.

RESEARCH REFERENCES

ALR. Construction of provisions of Internal Revenue Code relating to alimony or maintenance payments. 4 A.L.R.2d 252.

Am Jur. 24 Am. Jur. 2d, Divorce and Separation, §§ 543, 597, 611, 612, 635.

35 Am. Jur. 2d, Federal Tax Enforcement, § 27.

42 Am. Jur. 2d, Inheritance, Estate, and Gift taxes § 202.

71 Am. Jur. 2d, State and Local Taxation, §§ 448, 449, 450 (moving expenses, medical expenses, alimony payments).

Petition for refund of personal income tax paid under protest when deduction of alimony payments to former nonresident wife erroneously disallowed, 22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 352.

CJS. 85 C.J.S., Taxation §§ 2006-2041.

§ 27-7-19. Items not deductible.

In computing net income, no deductions shall, in any case, be allowed in respect of:

(a) Personal, living or family expenses.

(b) Any amount paid out for new buildings or permanent improvements or betterments made to increase the value of any property or estate, except in computing the net income from sale of such property.

(c) Any amount expended in restoring property or making good the exhaustion thereof for which an allowance is, or has been, made.

(d) Premiums paid on any life insurance policy of an officer or employee or to any persons financially interested in any trade or business carried on by the taxpayer when the taxpayer is directly or indirectly a beneficiary under such policy.

(e) The shrinkage value of property by whatever name called.

(f) Sums representing interest, rents, salaries or other sums paid under contracts or agreements between husband and wife.

(g) Losses sustained or realized from transactions between husband and wife; parent and child; relations by blood or marriage (within the third degree computed according to the rules of the civil law); or individuals who have one common parent; or corporation and individual where the individual owns five percent (5%) or more of the stock of the corporation.

SOURCES: Codes, 1942, § 9220-10; Laws, 1934, ch. 120; Laws, 1938, ch. 116; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 9, eff from and after January 1, 1952.

JUDICIAL DECISIONS

1. In general.

This section and the preceding section are in pari materia. State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

RESEARCH REFERENCES

ALR. What constitutes trade or business under Internal Revenue Code (U.S.C.S. Title 26). 161 A.L.R. Fed. 245.

CJS. 85 C.J.S., Taxation §§ 2026-2041.

§ 27-7-20. Casualty losses of individuals.

Casualty losses of individuals shall be computed and allowed in accordance with the provisions of the Internal Revenue Code, rules, regulations and revenue procedures relating to casualty and theft losses and disaster losses not in direct conflict with the provisions of the Mississippi Income Tax Law.

The State Tax Commission shall apply a special rule with respect to any loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the federal government under the Disaster Relief Act of 1974. In lieu of the net operating loss carryover provision, a "net casualty loss" deduction may result when itemized deductions, including the original casualty loss, exceed gross income. The "net casualty loss" shall be computed with the following modifications:

(a) No other net casualty loss deduction shall be allowed.

(b) No net operating loss deduction shall be allowed.

(c) No deduction for personal and additional exemptions shall be allowed.

(d) Allowable deductions which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business.

The "net casualty loss" is allowed as a deduction from gross income and may be carried back to each of the three (3) years preceding the tax year in which the original casualty loss is claimed or as otherwise provided under the Internal Revenue Code. If the net casualty loss deduction is not exhausted within the three (3) preceding years or as otherwise provided under the Internal Revenue Code, any net casualty loss remaining shall be carried over to each of the seven (7) years following the tax year in which the original casualty loss is claimed. In determining the amount of any net casualty loss carryback or carryover to any tax year, the necessary computations involving any other tax year shall be made under the law applicable to such other tax year.

SOURCES: Laws, 1979, 1st Ex Sess. ch. 8, § 1; Laws, 1985, ch. 521, § 2; Laws, 2007, ch. 466, § 1, eff from and after Jan. 1, 2007.

Editor's Note — Section 27-3-4 provides that the term "State Tax Commission" shall mean the Department of Revenue.

Cross References — Applicability of three-year period for examination of returns provided under 27-7-49 where reportable taxable income of taxpayer has been decreased by the carryback of a net casualty loss deduction under this section, see § 27-7-49.

Federal Aspects — Internal Revenue Code generally, see USCS, Title 26.

Disaster Relief Act of 1974, see 42 USCS § 5121 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 50.

§ 27-7-21. Exemptions allowed.

(a) **Allowance of deductions.** In the case of a resident individual, the exemptions provided by this section, as applicable to individuals, shall be allowed as deductions in computing taxable income.

(b) **Single individuals.** In the case of a single individual, a personal exemption of Five Thousand Two Hundred Fifty Dollars ($5,250.00) for the 1979 and 1980 calendar years and Six Thousand Dollars ($6,000.00) for each calendar year thereafter.

(c) **Married individuals.** In the case of married individuals living together, a joint personal exemption of Eight Thousand Dollars ($8,000.00) for the 1979 and 1980 calendar years and Nine Thousand Five Hundred Dollars ($9,500.00) for the 1981 through 1997 calendar years, Ten Thousand Dollars ($10,000.00) for the calendar year 1998, Eleven Thousand Dollars ($11,000.00) for the calendar year 1999, and Twelve Thousand Dollars ($12,000.00) for each calendar year thereafter. A husband and wife living together shall receive but one (1) personal exemption in the amounts provided for in this subsection for each calendar year against their aggregate income.

(d) **Head of family individuals.** In the case of a head of family individual, a personal exemption of Eight Thousand Dollars ($8,000.00) for the 1979 and 1980 calendar years and Nine Thousand Five Hundred Dollars ($9,500.00) for each calendar year thereafter. The term "head of family" means an individual who is single, or married but not living with his spouse for the entire taxable year, who maintains a household which constitutes the principal place of abode of himself and one or more individuals who are dependents under the provisions of Section 152(a) of the Internal Revenue Code of 1954, as amended. The head of family individual shall be entitled to the additional dependent exemption as provided in subsection (e) of this section only to the extent of dependents in excess of the one (1) dependent needed to qualify as head of family.

(e) **Additional exemption for dependents.** In the case of any individual having a dependent, other than husband or wife, an additional personal exemption of One Thousand Five Hundred Dollars ($1,500.00) for each such dependent, except as otherwise provided in subsection (d) of this section. The term "dependent" as used in this subsection shall mean any person or individual who qualifies as a dependent under the provisions of Section 152, Internal Revenue Code of 1954, as amended.

(f) **Additional exemption for taxpayer or spouse aged sixty-five (65) or more.** In the case of any taxpayer or the spouse of the taxpayer who has attained the age of sixty-five (65) before the close of his taxable year, an additional exemption of One Thousand Five Hundred Dollars ($1,500.00).

(g) **Additional exemption for blindness of taxpayer or spouse.** In the case of any taxpayer or the spouse of the taxpayer who is blind at the close of the taxable year, an additional exemption of One Thousand Five Hundred Dollars ($1,500.00). For the purpose of this subsection, an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

(h) **Husband and wife — claiming exemptions.** In the case of husband and wife living together and filing combined returns, the personal and additional exemptions authorized and allowed by this section may be taken by either, or divided between them in any manner they may choose. If the husband and wife fail to choose, the commissioner shall divide the exemptions between husband and wife in an equitable manner. In the case of a husband and wife filing separate returns, the personal and additional exemptions authorized and allowed by this section shall be divided equally between the spouses.

(i) **Nonresidents.** A nonresident individual shall be allowed the same personal and additional exemptions as are authorized for resident individuals in subsection (a) of this section; however, the nonresident individual is entitled only to that proportion of the personal and additional exemptions as his net income from sources within the State of Mississippi bears to his total or entire net income from all sources.

A nonresident individual who is married and whose spouse has income from independent sources must declare the joint income of himself and his spouse from sources within and without Mississippi and claim as a personal exemption that proportion of the authorized personal and additional exemptions which the total net income from Mississippi sources bears to the total net income of both spouses from all sources. If both spouses have income from sources within Mississippi and wish to file separate returns, their combined personal and additional exemptions shall be that proration of the exemption which their combined net income from Mississippi sources is of their total combined net income from all sources. The amount of the personal and additional exemptions so computed may be divided between them in any manner they choose.

In the case of married individuals where one (1) spouse is a resident and the other is a nonresident, the personal exemption of the resident individual shall be prorated on the same basis as if both were nonresidents having net income from within and without the State of Mississippi.

For the purpose of this subsection, the term "net income" means gross income less business expenses incurred in the taxpayer's regular trade or business and computed in accordance with the provisions of the Mississippi Income Tax Law.

(j) **Part-year residents.** An individual who is a resident of Mississippi for only a part of his taxable year by reason of either moving into the state or moving from the state shall be allowed the same personal and additional exemptions as authorized for resident individuals in subsection (a) of this section; the part-year resident shall prorate his exemption on the same basis as nonresidents having net income from within and without the state.

(k) **Estates.** In the case of an estate, a specific exemption of Six Hundred Dollars ($600.00).

(*l*) **Trusts.** In the case of a trust which, under its governing instrument, is required to distribute all of its income currently, a specific exemption of Three Hundred Dollars ($300.00). In the case of all other trusts, a specific exemption of One Hundred Dollars ($100.00).

(m) **Corporations, foundations, joint ventures, associations.** In the case of a corporation, foundation, joint venture or association taxable herein, there shall be allowed no specific exemption, except as provided under the Growth and Prosperity Act, and Sections 57-113-1 through 57-113-7.

(n) **Status.** The status on the last day of the taxable year, except in the case of the head of family as provided in subsection (d) of this section, shall determine the right to the exemptions provided in this section; provided, that a taxpayer shall be entitled to such exemptions, otherwise allowable, if the husband or wife or dependent has died during the taxable year.

(o) **Fiscal-year taxpayers.** Individual taxpayers reporting on a fiscal year basis shall prorate their exemptions in a manner established by regulations promulgated by the commissioner.

SOURCES: Codes, 1942, § 9220-11; Laws, 1934, ch. 120; Laws, 1938, ch. 116; Laws, 1940, ch. 123; Laws, 1944, ch. 124; Laws, 1946, ch. 246, § 1; Laws, 1952, ch. 402, § 10; Laws, 1958, ch. 555; Laws, 1960, ch. 456, § 2; Laws, 1960, ch. 457, § 2; Laws, 1966, ch. 629, § 1; Laws, 1968, ch. 580, § 27; Laws, 1973, ch. 504, § 3; Laws, 1979, ch. 302, § 1; Laws, 1982, ch. 489, § 2; Laws, 1997, ch. 304, § 2; Laws, 2000, 2nd Ex Sess, ch. 1, § 48; Laws, 2010, ch. 533, § 20, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in paragraph (m). Added heading "Corporations, foundations, joint ventures, associations" preceding paragraph text and added a space between the words "specific" and "exemption" in the text. The Joint Committee ratified the correction at its June 26, 2007, meeting.

Editor's Note — Laws of 1997, ch. 304, § 3, effective January 1, 1997, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws of the State of Mississippi prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2000, 2nd Ex Sess, ch. 1, § 1, effective January 1, 2001, provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Laws of 2000, 2nd Ex Sess, ch. 1, § 62, approved August 30, 2000, provides:

"SECTION 62. Sections 34 through 39, 40, 41 and 48 through 51 of this act shall take effect and be in force from and after January 1, 2001. The remainder of this act shall take effect and be in force from and after its passage."

Laws of 2010, ch. 533, § 52, provides:

"SECTION 52. Sections 12 through 23 of this act shall take effect and be in force from and after July 1, 2010, Section 37 of this act shall take effect and be in force from and after January 1, 2010, and the remainder of this act shall take effect and be in force from and after its passage [April 16, 2010]."

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Prohibition against claiming exemption under this section when casualty loss arising from fire, storm, shipwreck, flood, theft, or other casualty is allowed, see § 27-7-20.

Exemption of bonds, and income therefrom, issued for the support of the Institute for Technology Development from all state taxation, see § 31-29-7.

Growth and Prosperity Act, see § 57-80-1 et seq.

Federal Aspects — Section 152(a) of the Internal Revenue Code, see 26 USCS § 152(a).

JUDICIAL DECISIONS

1. In general.

Exemption from income tax, resting upon classification which legislature has power to make, did not violate equality clause of constitution, nor deny equal protection of laws. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

RESEARCH REFERENCES

ALR. State court's authority, in marital or child custody proceeding, to allocate federal income tax dependency exemption for child to noncustodial parent under § 152(e) of the Internal Revenue Code (26 USCS § 152(e)). 77 A.L.R.4th 786.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 207-308 (exemptions from taxation).

CJS. 85 C.J.S., Taxation §§ 2022-2025.

§ 27-7-22. Tax credits for qualified businesses.

(1) For any qualified business, as defined in Section 57-51-5, which is located in a county, or portion thereof, designated as an enterprise zone pursuant to Title 57, Chapter 51, Mississippi Code of 1972, there shall be allowed as a credit against the tax imposed by this chapter, an amount equal to One Thousand Dollars ($1,000.00) per net full-time employee as determined by the average annual employment of the business reported to the Employment Security Commission. Such credit shall be allowed annually to each qualified business for a period not to exceed ten (10) years. If the amount allowable as a credit exceeds the tax imposed by this chapter, the amount of such excess shall not be refundable or carried forward to any other taxable year.

For the purpose of determining the credit allowed to a qualified business which is an existing trade or business having expanded its buildings and facilities, the number of net full-time employees shall be the difference between the average annual employment of such business before and after such expansion.

If the Mississippi Enterprise Zone Act is repealed, any qualified business which had been granted a tax credit under this subsection prior to the date of such repeal shall be entitled to such tax credit until the period for which it was granted expires.

(2) For any qualified business, as defined in Section 57-54-5 [see Editor's Note below], there shall be allowed as a credit against the tax imposed by this chapter, an amount equal to One Thousand Dollars ($1,000.00) per net full-time employee as determined by the average annual employment of the business reported to the Employment Security Commission. Such credit shall be allowed annually to each qualified business for a period not to exceed ten (10) years. If the amount allowable as a credit exceeds the tax imposed by this chapter, the amount of such excess shall not be refundable or carried forward to any other taxable year.

For the purpose of determining the credit allowed to a qualified business which is an existing trade or business having expanded its buildings and facilities, the number of net full-time employees shall be the difference between the average annual employment of such business before and after such expansion.

If the Mississippi Advanced Technology Initiative Act is repealed, any qualified business which had been granted a tax credit under this subsection prior to the date of such repeal shall be entitled to such tax credit until the period for which it was granted expires.

(3) For any qualified company, certified as such by the Mississippi Board of Economic Development under Section 57-53-1 [see Editor's Note below], there shall be allowed as a credit against the tax imposed by this chapter, an amount equal to One Thousand Dollars ($1,000.00) per net full-time employee in this state, provided there is a minimum of seventy-five (75) net full-time employees, as determined by the average annual employment of the company in this state reported to the Employment Security Commission. Such credit shall be allowed annually to each qualified company for a period not to exceed ten (10) years. If the amount allowable as a credit exceeds the tax imposed by this chapter, the amount of such excess shall not be refundable or carried forward to any other taxable year.

For the purpose of determining the credit allowed to a qualified company which has expanded its existing buildings and facilities, the number of net full-time employees shall be the difference between the average annual employment of such company before and after such expansion.

SOURCES: Laws, 1983, ch. 475, § 9; Laws, 1983, ch. 491, § 9; Laws, 1984, ch. 381, § 6; Laws, 1986, ch. 410, § 2, eff from and after July 1, 1986.

Editor's Note — Section 57-1-2 provides that wherever the term "Board of Economic Development" appears in the laws of the State of Mississippi, it shall mean the Department of Economic and Community Development.

Section 57-51-5 referred to in (1) was repealed by Laws of 1989, ch. 524, § 32, eff from and after July 1, 1989.

Section 57-53-1, referred to in subsection (3), was repealed by Laws of 1989, ch. 524, § 33, effective July 1, 1989.

Section 57-54-5, referred to in subsection (2), was repealed by Laws of 1989, ch. 524, § 34, effective July 1, 1989.

Cross References — Tax credit, on amount provided for in this section, to approved company making financing agreement in connection with economic development project, see § 57-10-409.

RESEARCH REFERENCES

ALR. What constitutes trade or business under Internal Revenue Code (U.S.C.S. Title 26). 161 A.L.R. Fed. 245.

§ 27-7-22.1. Repealed.

Repealed by operation of law on January 1, 1999, by Laws, 1997, ch. 316, § 22.

[Laws, 1993, ch. 557, § 1; Laws, 1997, ch. 316, § 22, eff from and after passage (approved March 12, 1997) and shall stand repealed from and after January 1, 1999.]

Editor's Note — This section was entitled "Income tax credit for employers who hire persons receiving Temporary Assistance for Needy Families."

§ 27-7-22.3. Credit for employees who pay job assessment fee; credit against state income taxes for authorized companies [Repealed effective October 1, 2022].

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, this section shall read as follows:]

(1) For taxpayers who are required to pay a job assessment fee as provided in Section 57-10-413, there shall be allowed as a credit against the taxes imposed by this chapter, an amount equal to the amount of the job assessment fee imposed upon such taxpayer pursuant to Section 57-10-413. If the amount allowable as a credit exceeds the tax imposed by this article and Section 27-7-22.3, the amount of such excess shall not be refundable or carried forward to any other taxable year.

(2) For any approved company as defined in Section 57-10-401, there shall be allowed against the taxes imposed by this chapter on the income of the approved company generated by or arising out of the economic development project (as defined in Section 57-10-401), a credit in an amount not to exceed the total debt service paid under a financing agreement entered into under Section 57-10-409. The tax credit allowed in this subsection shall not exceed the amount of taxes due the State of Mississippi.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1994, but has issued bonds for such project prior to July 1, 1997, or in cases involving an economic development project which has been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

(1) For taxpayers who are required to pay a job assessment fee as provided in Section 57-10-413, there shall be allowed as a credit against the taxes imposed by this chapter, an amount equal to the amount of the job assessment fee imposed upon such taxpayer pursuant to Section 57-10-413.

If the amount allowable as a credit exceeds the tax imposed by this article and Section 27-7-22.3, the amount of such excess shall not be refundable or carried forward to any other taxable year.

(2) For any approved company as defined in Section 57-10-401, there shall be allowed against the taxes imposed by this chapter on the income of the approved company generated by or arising out of the economic development project (as defined in Section 57-10-401), a credit in an amount not to exceed the total debt service paid under a financing agreement entered into under Section 57-10-409. The tax credit allowed in this subsection shall not exceed the amount of taxes due the State of Mississippi. The amount of income of the approved company generated by or arising out of the economic development project shall be determined by a formula adopted by the Mississippi Business Finance Corporation.

[In cases involving an economic development project for which the Mississippi Business Finance Corporation has not issued bonds for the purpose of financing the approved costs of such project prior to July 1, 1997, or in cases involving an economic development project which has not been induced by a resolution of the Board of Directors of the Mississippi Business Finance Corporation that has been filed with the State Tax Commission prior to July 1, 1997, this section shall read as follows:]

For any approved company as defined in Section 57-10-401, there shall be allowed against the taxes imposed by this chapter on the income of the approved company generated by or arising out of the economic development project (as defined in Section 57-10-401), a credit in an amount not to exceed the total debt service paid under a financing agreement entered into under Section 57-10-409; provided, however, that the tax credit allowed in this subsection shall not exceed eighty percent (80%) of the amount of taxes due the State of Mississippi prior to the application of the credit. To the extent that financing agreement annual payments exceed the amount of the credit authorized pursuant to this section in any taxable year, such excess payment may be recouped from excess credits in succeeding years not to exceed three (3) years following the date upon which the credit was earned. The amount of income of the approved company generated by or arising out of the economic development project shall be determined by a formula adopted by the Mississippi Business Finance Corporation.

SOURCES: Laws, 1993, ch. 565, § 24; Laws, 1994, ch. 525, § 1; Laws, 1997, ch. 576, § 24; reenacted without change, Laws, 2000, ch. 425, § 24; reenacted without change, Laws, 2001, ch. 337, § 24; reenacted without change, Laws, 2005, ch. 399, § 24; reenacted without change, Laws, 2007, ch. 389, § 24; reenacted without change, Laws, 2011, ch. 519, § 24; reenacted without change, Laws, 2015, ch. 398, § 25; reenacted without change, Laws, 2017, ch. 325, § 25, eff from and after July 1, 2017.

Editor's Note — For repeal date of this section, see § 57-10-449.

Amendment Notes — The 2017 amendment reenacted the section without change.

Cross References — State Tax Commission as meaning Department of Revenue, § 27-7-3.

Tax credit, as provided for in this section, for job development assessment fee, see § 57-10-413.

Effect of amendments to §§ 57-10-401 through 57-10-445 enacted after July 1, 1993, on this section, see § 57-10-435.

ATTORNEY GENERAL OPINIONS

"Mineral processing" does not include use of Mississippi minerals not mined or extracted by the manufacturer as raw materials in a manufacturing process, and, therefore, the use of carbon dioxide as a raw material does not constitute mineral processing. Pumphrey, May 21, 1999, A.G. Op. #99-0225.

§ 27-7-22.5. Income tax credit for manufacturers, distributors and wholesale or retail merchants for ad valorem taxes paid on commodities, raw materials, works-in-process, goods, wares and merchandise held for resale; income tax credit for individual, firm or corporation for ad valorem taxes on rental equipment.

(1)(a) For any manufacturer, distributor, wholesale or retail merchant who pays to a county, municipality, school district, levee district or any other taxing authority of the state or a political subdivision thereof, ad valorem taxes imposed on commodities, raw materials, works-in-process, products, goods, wares and merchandise held for resale, a credit against the income taxes imposed under this chapter shall be allowed for the portion of the ad valorem taxes so paid in the amounts prescribed in subsection (2).

(b)(i) For any person, firm or corporation who pays to a county, municipality, school district, levee district or any other taxing authority of the state or a political subdivision thereof, ad valorem taxes imposed on rental equipment, a credit against the income taxes imposed under this chapter shall be allowed for the portion of the ad valorem taxes so paid in the amounts prescribed in subsection (2).

(ii) As used in this paragraph, "rental equipment" means any rental equipment or other rental items which are held for short-term rental to the public:

1. Under rental agreements with no specific term;
2. Under at-will or open-ended agreements; or
3. Under rental agreements with terms ordinarily of less than three hundred sixty-five (365) days; and
4. Is not subject to privilege taxes imposed in Chapter 19, Title 27, Mississippi Code of 1972.

(2) The tax credit allowed by this section shall not exceed the amounts set forth in paragraphs (a) through (g) of this subsection; and may be claimed for each location where such commodities, raw material, works-in-process, products, goods, wares, merchandise and/or rental equipment are found and upon which the ad valorem taxes have been paid. Any tax credit claimed under this

section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credit was earned.

(a) For the 1994 taxable year, the tax credit for each location of the taxpayer shall not exceed the lesser of Two Thousand Dollars ($2,000.00) or the amount of income taxes due the State of Mississippi that are attributable to such location.

(b) For the 1995 taxable year, the tax credit for each location of the taxpayer shall not exceed the lesser of Three Thousand Dollars ($3,000.00) or the amount of income taxes due the State of Mississippi that are attributable to such location.

(c) For the 1996 taxable year, the tax credit for each location of the taxpayer shall not exceed the lesser of Four Thousand Dollars ($4,000.00) or the amount of income taxes due the State of Mississippi that are attributable to such location.

(d) For the 1997 taxable year and each taxable year thereafter through taxable year 2013, the tax credit for each location of the taxpayer shall not exceed the lesser of Five Thousand Dollars ($5,000.00) or the amount of income taxes due the State of Mississippi that are attributable to such location.

(e) For the 2014 taxable year, the tax credit for each location of the taxpayer shall not exceed the lesser of Ten Thousand Dollars ($10,000.00) or the amount of income taxes due the State of Mississippi that are attributable to such location.

(f) For the 2015 taxable year, the tax credit for each location of the taxpayer shall not exceed the lesser of Fifteen Thousand Dollars ($15,000.00) or the amount of income taxes due the State of Mississippi that are attributable to such location.

(g) For the 2016 taxable year and each taxable year thereafter, the tax credit of the taxpayer shall be the lesser of the amount of the ad valorem taxes described in subsection (1) paid or the amount of income taxes due the State of Mississippi that are attributable to such location.

(3) Any amount of ad valorem taxes paid by a taxpayer that is applied toward the tax credit allowed in this section may not be used as a deduction by the taxpayer for state income tax purposes. In the case of a taxpayer that is a partnership, limited liability company or S corporation, the credit may be applied only to the tax attributable to partnership, limited liability company or S corporation income derived from the taxpayer.

SOURCES: Laws, 1994, ch. 304, § 1; Laws, 1997, ch 372, § 1; Laws, 2012, ch. 523, § 1; Laws, 2014, ch. 530, § 46, eff from and after Jan. 1, 2014.

Editor's Note — Laws of 2014, § 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage [April 24, 2014], and the remainder of this act shall take effect and be in force from and after July 1, 2014."

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 451 et seq. (credits against tax liability).

§ 27-7-22.7. Income tax credit for charges for using certain public port facilities [Repealed effective December 31, 2019].

(1) As used in this section, the term "port" means a state, county or municipal port or harbor established pursuant to Sections 59-5-1 through 59-5-69, Sections 59-7-1 through 59-7-519, Sections 59-9-1 through 59-9-85 or Sections 59-11-1 through 59-11-7.

(2) For any income taxpayer utilizing the port facilities at any port for the export of cargo that is loaded on a carrier calling at any such port, a credit against the taxes imposed pursuant to this chapter shall be allowed in the amounts provided in this section.

(3) Except as otherwise provided by subsection (5) of this section, the amount of the credit allowed pursuant to this section shall be the total of the following charges on export cargo paid by the corporation:

(a) Receiving into the port;
(b) Handling to a vessel; and
(c) Wharfage.

(4) The credit provided for in this section shall not exceed fifty percent (50%) of the amount of tax imposed upon the taxpayer for the taxable year reduced by the sum of all other credits allowable to such taxpayer under this chapter, except credit for tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five (5) years. The maximum cumulative credit that may be claimed by a taxpayer pursuant to this section and for the period of time beginning on January 1, 1994, and ending on December 31, 2005, is limited to One Million Two Hundred Thousand Dollars ($1,200,000.00).

(5) To obtain the credit provided for in this section, a taxpayer must provide to the Department of Revenue a statement from the governing authority of the port certifying the amount of charges paid by the taxpayer for which a credit is claimed and any other information required by the Department of Revenue.

(6) The purpose of the tax credit provided for in this section is to promote the increased use of ports and related facilities in this state, particularly by those taxpayers which would not otherwise use such ports and related facilities without the benefit of such tax credit, and increase the number of port related jobs and other economic development benefits associated with the increased use of such ports and related facilities. It is the intent of the Legislature that in determining whether or not such tax credit will be continued in future years, the attainment of the purposes set forth in this subsection must be demonstrated by the material contained in the reports prepared by the Mississippi Development Authority under Section 27-7-22.9.

SOURCES: Laws, 1994, ch. 492, § 1; reenacted and amended, Laws, 1998, ch. 548, § 1; reenacted and amended, Laws, 2002, ch. 537, § 1; reenacted without change, Laws, 2005, ch. 457, § 1; reenacted without change, Laws, 2009, ch. 322, § 1; reenacted without change, Laws 2012, ch. 377, § 1; reenacted and amended, Laws, 2016, ch. 335, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (1). The reference to "Sections 59-11-1 through 59-11-11" was changed to "Sections 59-11-1 through 59-11-7." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (1) by inserting the word "Sections" preceding "59-9-1 through 59-9-85." The Joint Committee ratified the correction at its August 15, 2017, meeting.

Editor's Note — Laws of 1994, ch. 492, § 4, as amended by Laws of 1998, ch. 548, § 3, as amended by Laws of 2002, ch. 537, § 3, as amended by Laws of 2005, ch. 457, § 3, as amended by Laws of 2009, ch. 322, § 3, as amended by Laws of 2012, ch. 377, § 3, and as amended by Laws of 2016, ch. 335, § 3, provides:

"SECTION 4. This act shall take effect and be in force from and after January 1, 1994, and shall stand repealed from and after December 31, 2019."

Laws of 1998, ch. 548, § 4, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment reenacted and amended the section by substituting "Department of Revenue" for "State Tax Commission" both times it appears in (5).

§ 27-7-22.9. Income tax credit for charges for using certain public port facilities; annual report regarding impact of § 27-7-22.7 [Repealed effective December 31, 2019].

The Mississippi Development Authority shall report annually to the Legislature regarding the impact of the credit granted in Section 27-7-22.7 on shipping and economic growth. Each report shall show the overall annual increase on shipping at each port for the most recent year for which data is available and for each of the previous five (5) years. Each report shall estimate the number of jobs created or retained at each port and in businesses related to port activity at each port since January 1, 1994, as compared to the number of similar jobs created during the ten (10) years preceding January 1, 1994. Each report shall state the net economic impact on the state as a result of the tax credit provided for in Section 27-7-22.7. The Mississippi Development Authority shall file a copy of the report with the Governor, the Secretary of the Senate, the Clerk of the House of Representatives and the Chairmen of the

House Ways and Means Committee and the Senate Finance Committee of the Legislature on May 1 of each year. The Department of Revenue and all state, county and municipal ports shall cooperate with the Mississippi Development Authority in providing the information required in the annual reports.

SOURCES: Laws, 1994, ch. 492, § 2; reenacted without change, Laws, 1998, ch. 548, § 2; reenacted and amended, Laws, 2002, ch. 537, § 2; reenacted without change, Laws, 2005, ch. 457, § 2; reenacted without change, Laws, 2009, ch. 322; reenacted without change, Laws, 2012, ch. 377, § 2; reenacted and amended, Laws, 2016, ch. 335, § 2, eff from and after July 1, 2016.

Editor's Note — Laws of 1994, ch. 492, § 4, as amended by Laws of 1998, ch. 548, § 3, as amended by Laws of 2002, ch. 537, § 3, as amended by Laws of 2005, ch. 457, § 3, as amended by Laws of 2009, ch. 322, § 3, as amended by Laws of 2012, ch. 377, § 3, and as amended by Laws of 2016, ch. 335, § 3 provides as follows:

"SECTION 4. This act shall take effect and be in force from and after January 1, 1994, and shall stand repealed from and after December 31, 2019."

Laws of 1998, ch. 548, § 4, provides:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment substituted "Department of Revenue" for "State Tax Commission" in the last sentence.

§ 27-7-22.11. Tax credit under Venture Capital Act of 1994.

(1) Subject to subsection (2) of this section, the amount of the credit that a taxpayer may receive under the Venture Capital Act of 1994 for a particular taxable year is equal to the lesser of:

(a) The taxpayer's state tax liability for the taxable year; or

(b) The amount determined in Step Three of the following steps:

Step One: Add the consideration paid for all qualified investments of the taxpayer during the taxable year of the taxpayer.

Step Two: Multiply the amount determined in Step One by three-tenths ($3/10$).

Step Three: Add the product determined in Step Two to the credit carry-over, if any, to which the taxpayer is entitled for the taxable year under subsection (2) of this section.

(2) If the amount of the credit determined under subsection (1)(b) of this section exceeds the credit allowed under subsection (1)(a) of this section for that taxable year, then the taxpayer may carry the excess over to the immediately succeeding taxable years; however, the credit carry-over may not be used for any taxable year that begins on or after ten (10) years from the date of the qualified investment. The amount of the credit carry-over from a taxable year must be reduced to the extent that the carry-over is used by the taxpayer

to obtain a credit under the Venture Capital Act of 1994 for any subsequent taxable year.

(3) If a qualified investment which is the basis for a credit under the Venture Capital Act of 1994 is either redeemed by the Magnolia Venture Capital Fund Limited Partnership or Magnolia Venture Capital Corporation or transferred by the holder thereof (other than a redemption or transfer caused by the death of such holder) within five (5) years after the date it is purchased, such credit for the qualified investment shall be disallowed; and any credit previously claimed on the taxpayer's return and allowed as a credit against state tax liability with respect to the qualified investment so redeemed or transferred shall be recaptured in full as additional tax liability on the appropriate state tax return of the taxpayer covering the period in which the redemption or transfer occurs. Neither a distribution by the fund nor dividends or other distributions by Magnolia Venture Capital Corporation are considered to be redemption of a qualified investment unless the proportionate interest of the taxpayer receiving the distribution or dividend in either the assets or income and loss of Magnolia Venture Capital Fund Limited Partnership decreases as the result of the distribution or dividend.

(4) For purposes of this section the terms "state tax liability," "taxpayer" and "qualified investment" shall have the meaning ascribed to them in Section 57-77-3.

SOURCES: Laws, 1994, ch. 650, § 5, eff from and after January 1, 1994.

Cross References — Venture Capital Act of 1994, see § 57-77-1 et seq.

§ 27-7-22.13. Financial institution; credit; net gain.

(1) For the purposes of this section, the term "financial institution" shall have the meaning set forth in Section 27-7-24.1(h)(i), (ii), (iii), (iv), or (viii).

(2) There shall be allowed to a Mississippi employer which is a financial institution a credit against the income taxes imposed under this chapter based upon the net gain, if any, in the number of employees of the financial institution in connection with one of the following transactions:

(a) The merger or consolidation of a Mississippi financial institution with an out-of-state financial institution;

(b) The purchase by a Mississippi domiciled financial institution of all or substantially all of the assets (including all or substantially all of the branches) of an out-of-state financial institution;

(c) The purchase by an out-of-state financial institution of all or substantially all of the assets (including all or substantially all of the branches) of a Mississippi domiciled financial institution;

(d) The purchase by a Mississippi domiciled financial institution of all or substantially all of the assets (including all or substantially all of the branches) of an out-of-state financial institution in a state other than the State of Mississippi even though:

(i) Two (2) or more financial institutions are not merged or consolidated; or

(ii) All or substantially all of the assets of the financial institution are not purchased; or

(e) The purchase by an out-of-state financial institution of all or substantially all of the assets (including all or substantially all of the branches) in the State of Mississippi of a financial institution even though:

(i) Two (2) or more financial institutions are not merged or consolidated; or

(ii) All or substantially all of the assets of the financial institution are not purchased.

(3) The net gain, if any, in the number of employees shall be determined by a comparison of:

(a) The number of employees listed on the Employer's Quarterly Contribution Report filed with the Mississippi Employment Security Commission by the financial institution for the month the transaction was completed; and

(b) The number of employees listed on the Employer's Quarterly Contribution Report filed with the Mississippi Employment Security Commission by the financial institution for the same month one (1) year following completion of the transaction, exclusive of the number of employees gained in connection with intervening transactions.

(4) The base amount of the credit provided in this section shall be equal to the net gain in the number of employees multiplied by One Thousand Five Hundred Dollars ($1,500.00). The financial institution may claim as a credit against income tax an amount equal to one hundred percent (100%) of the base amount in the tax year the determination is made, eighty percent (80%) in the next year, sixty percent (60%) in the third year, forty percent (40%) in the fourth year and twenty percent (20%) in the fifth year. The credit allowed by this section shall not exceed the amount of the taxes due to the State of Mississippi by the financial institution. Any amount allowable as a credit pursuant to this section that exceeds the financial institution's tax liability shall not be refunded or carried forward to any other taxable year.

(5) The credit authorized by this section shall apply only to transactions described in this section which are completed after March 29, 1996.

(6) The commission may promulgate regulations to implement this section.

SOURCES: Laws, 1996, ch. 441, § 68, eff from and after passage (approved March 29, 1996).

§ 27-7-22.15. Income tax credit for approved reforestation practices.

(1) As used in this section, the following words and phrases shall have the meanings ascribed to herein unless the context clearly indicates otherwise:

(a) "Approved reforestation practices" means the following practices for establishing a crop of trees suitable for manufacturing into forest products:

(i) "Pine and hardwood tree planting practices" including the cost of seedlings, planting by hand or machine, and site preparation.

(ii) "Mixed-stand regeneration practices" to establish a mixed-crop of pine and hardwood trees by planting or direct seeding, or both, including the cost of seedlings, seed/acorns, planting, seeding and site preparation.

(iii) "Direct seeding practices" to establish a crop of pine or oak trees by directly applying seed/acorns to the site including the cost of seed/acorns, seeding and site preparation.

(iv) "Post-planting site preparation practices" to reduce or control undesirable competition within the first growing season of an established crop of trees.

Approved reforestation practices shall not include the establishment of orchards, Christmas trees or ornamental trees.

(b) "Eligible tree species" means pine and hardwood commercial tree species suitable for manufacturing into forest products.

(c) "Cost-share assistance" means partial financial payment for approved reforestation practices from the state government as authorized under Sections 49-19-201 through 49-19-227, or the federal government.

(d) "Eligible owner" means a private individual, group or association, but the term shall not mean private corporations which manufacture products or provide public utility services of any type or any subsidiary of such corporations.

(e) "Eligible lands" means nonindustrial private lands owned by a private individual, group or association, but shall not mean lands owned by private corporations which manufacture products or provide public utility services of any type or any subsidiary of such corporations.

(f) "Reforestation prescription or plan" means a written description of the approved reforestation practices that the eligible owner plans to use and includes a legal description and map of the area to be reforested, a list of the tree seedling or seed species to be used in the reforestation and the site preparation practices that will be utilized.

(2) Subject to the limitations provided in subsection (3) of this section, upon submission to the State Tax Commission of the written verification provided for in subsection (5) of this section and such other documentation as the State Tax Commission may require, any eligible owner who incurs costs for approved reforestation practices for eligible tree species on eligible lands shall be allowed a credit, in an amount equal to the lesser of fifty percent (50%) of the actual costs of the approved reforestation practices or fifty percent (50%) of the average cost of approved practices as established by the Mississippi Forestry Commission under Section 49-19-219, against the taxes imposed pursuant to this chapter for the tax year in which the costs are incurred.

(3) The maximum amount of the credit provided for in subsection (2) of this section that may be utilized in any one (1) taxable year shall not exceed the lesser of Ten Thousand Dollars ($10,000.00) or the amount of income tax

imposed upon the eligible owner for the taxable year reduced by the sum of all other credits allowable to the eligible owner under this chapter, except credit for tax payments made by or on behalf of the eligible owner. Any unused portion of the credit may be carried forward for succeeding tax years. The maximum dollar amount of the credit provided for in subsection (2) of this section that an eligible owner may utilize during his lifetime shall be Seventy-five Thousand Dollars ($75,000.00) in the aggregate.

(4) If an eligible owner receives any state or federal cost share assistance funds to defray the cost of an approved reforestation practice, the cost of that practice on the same acre or acres within the same tax year is not eligible for the credit provided in this section unless the eligible owner's adjusted gross income is less than the federal earned income credit level.

(5) To be eligible for the tax credit, an eligible owner must have a reforestation prescription or plan prepared for the eligible lands by a graduate forester of a college, school or university accredited by the Society of American Foresters or by a registered forester under the Foresters Registration Law of 1977. The forester must verify in writing that the reforestation practices were completed and that the reforestation prescription or plan was followed.

SOURCES: Laws, 1999, ch. 483, § 1; Laws, 2007, ch. 461, § 1, eff from and after Jan. 1, 2007.

Editor's Note — Laws of 1999, ch. 483, § 3, effective January 1, 1999, provides: "SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

§ 27-7-22.16. Income tax credit for remediation costs incurred at brownfield agreement site.

(1)(a) Except as otherwise provided under this subsection, the words and phrases used in this section shall have the meanings ascribed to them in Section 49-35-5, Mississippi Code of 1972.

(b) "Remediation costs" means reasonable costs paid for the assessment, investigation, remediation, monitoring and related activities at a brownfield agreement site which are consistent with the remedy selected for the site, and costs paid to the Department of Environmental Quality for the processing of the brownfield agreement application and administration of a brownfield agreement. Remediation costs shall not include (i) costs incurred before June 24, 1999; (ii) costs incurred after the issuance of a No Further Action letter under Section 49-35-15, Mississippi Code of 1972; (iii) costs incurred before the acceptance of a brownfield agreement site into the Mississippi Brownfields Voluntary Cleanup and Redevelopment program; (iv) costs incurred for any legal services or litigation costs; and (v) any funds provided by any federal, state or local governmental agency or political subdivision.

(2) Subject to the limitations provided in subsection (4) of this section, upon submission to the State Tax Commission of information provided for in subsection (5) of this section and any other documentation as the State Tax Commission may require, any brownfield party who (a) has conducted remediation at a brownfield agreement site in accordance with Sections 49-35-1 through 49-35-25 and (b) has incurred remediation costs for activities under Sections 49-35-1 through 49-35-25, as approved by the Commission on Environmental Quality, shall be allowed a credit in an amount equal to twenty-five percent (25%) of the remediation costs at the brownfield agreement site as approved by the commission, against the taxes imposed under this chapter for the tax year in which the costs are incurred.

(3)(a) Before applying for the tax credit authorized in this section, a brownfield party shall submit an application to the Department of Environmental Quality for certification that the brownfield party has conducted remediation at a brownfield agreement site in accordance with Sections 49-35-1 through 49-35-25 during the tax year(s) for which the credit is sought. The application shall be on forms prescribed by the Commission on Environmental Quality and provided by the Department. The application shall include the following:

(i) A section identifying the brownfield party, the brownfield agreement site, the date the brownfield agreement was executed and the tax year for which the credit is sought;

(ii) A certification that the costs to be submitted to the State Tax Commission are remediation costs incurred by the brownfield party during the tax year(s) for which the credit is sought. The certification shall include a listing of all remediation conducted and the associated costs; and

(iii) Any other information which the Commission on Environmental Quality or the State Tax Commission deems appropriate.

(b) Within sixty (60) days after receipt by the Department of a completed application, the department shall approve or disapprove the application. The Department shall notify the brownfield party in writing of its decision. If the department approves the application, the department shall provide the brownfield party with certification that the brownfield party has conducted remediation at a brownfield agreement site in accordance with Sections 49-35-1 through 49-35-25 during the tax year(s) for which the credit is sought. If the Department disapproves the application, the Department shall notify the brownfield party in writing and state the reasons for the disapproval.

(c) Within thirty (30) days after receipt of the Department's decision, the brownfield party may request a hearing before the Commission regarding the Department's decision to disapprove the application. An appeal of the Commission's decision may be taken as provided under Section 49-17-41.

(d) The Department's review of the application under this section shall be considered a part of the administration of the brownfield agreement.

(e) The department's review of the application for review of remediation costs under this section shall be considered a part of the administration of the brownfield agreement.

(4)(a) The annual credit provided for in this section shall not exceed the lesser of Forty Thousand Dollars ($40,000.00) or the amount of the income tax imposed upon the brownfield party at the brownfield agreement site for the taxable year as reduced by the sum of all other credits allowable to the brownfield party under this chapter, except for credit for tax payments made by or on behalf of the brownfield party. Any unused portion of the credit may be carried forward for succeeding tax years.

(b) The maximum total credit under this section for a brownfield agreement site is One Hundred Fifty Thousand Dollars ($150,000.00).

(5) To be eligible for the tax credit, the brownfield party must submit a copy of the letter from the commission stating the amount of remediation costs approved by the commission for the given tax year.

SOURCES: Laws, 2005, ch. 497, § 3, eff from and after Jan. 1, 2005.

Editor's Note — Laws of 2005, ch. 497, § 8, effective January 1, 2005, provides as follows:

"SECTION 8. Nothing in Laws of 2005, Chapter 497, shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before January 1, 2005 or are begun thereafter. The provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before January 1, 2005, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

Mississippi brownfields voluntary cleanup and redevelopment, see Chapter 35 of Title 49, § 49-35-1 et seq.

§ 27-7-22.17. Job tax credit for permanent business enterprises operating certain projects that create at least 3,000 new full-time jobs.

(1) Permanent business enterprises engaged in operating a project and companies that are members of an affiliated group that includes such permanent business enterprises are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to Five Thousand Dollars ($5,000.00) annually for each net new full-time employee job for a period of twenty (20) years from the date the credit commences; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business enterprise is unable to maintain the required number of employees, the commissioner may extend this time period for not more than two (2) years. The credit shall commence on the date selected

by the permanent business enterprise; however, the commencement date shall not be more than five (5) years from the date the business enterprise commences commercial production. For the year in which the commencement date occurs, the number of new full-time jobs shall be determined by using the monthly average number of full-time employees subject to the Mississippi income tax withholding. Thereafter, the number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Once a permanent business enterprise creates or increases employment three thousand (3,000) or more, such enterprise and the members of the affiliated group that include such enterprise, shall be eligible for the credit. The credit is not allowed for any year of the twenty-year period in which the overall monthly average number of full-time employees subject to the Mississippi income tax withholding falls below three thousand (3,000); however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business enterprise is unable to maintain the required number of employees, the commissioner may waive the employment requirement for a period of time not to exceed two (2) years. The State Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above three thousand (3,000).

(2) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned; however, if the permanent business enterprise is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business enterprise is unable to use the existing carryforward, the commissioner may extend the period that the credit may be carried forward for a period of time not to exceed two (2) years. The credit that may be utilized each year shall be limited to an amount not greater than the total state income tax liability of the permanent business enterprise and the state income tax liability of any member of the affiliated group that includes such enterprise that is generated by, or arises out of, the project.

(3) The tax credits provided for in this section shall be in lieu of the tax credits provided for in Section 57-73-21 and any permanent business enterprise or any member of the affiliated group that includes such enterprise utilizing the tax credit authorized in this section shall not utilize the tax credit authorized in Section 57-73-21.

(4) As used in this section:

(a) "Project" means a project as defined in Section 57-75-5(f) (iv).

(b) "Affiliated group" means one or more corporations connected through stock ownership with a common parent corporation where at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of each of the member corporations, except the common parent corporation, is directly owned by one or more of the other member corporations; and the common parent corporation directly owns stock possessing at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of at least one (1) of the other member corporations. As used in this subsection, the term "stock" does not include nonvoting stock that is limited and preferred as to dividends.

SOURCES: Laws, 2000, 3rd Ex Sess, ch. 1, § 1; Laws, 2007, ch. 454, § 1, eff from and after July 1, 2007.

Cross References — Job tax credit for corporations, see § 57-73-21.

RESEARCH REFERENCES

ALR. Protection of out-of-state sellers from state income tax by Public Law 86-272 (15 U.S.C.S. §§ 381 to 384). 182 A.L.R. Fed. 291.

§ 27-7-22.18. Job tax credit for business enterprises owning or operating certain projects that create at least 450 new full-time jobs.

(1) Any enterprise owning or operating a project as defined in Section 57-75-5(f) (xviii) is allowed a job tax credit for taxes imposed by Section 27-7-5 equal to Five Thousand Dollars ($5,000.00) annually for each net new full-time employee job for a period of ten (10) years from the date the credit commences. The credit shall commence on the date selected by the enterprise; provided, however, that the commencement date shall not be more than two (2) years from the date the project becomes fully operational. For the year in which the commencement date occurs, the enterprise must select a date on which it has at least four hundred fifty (450) full-time employees subject to the Mississippi income tax withholding. From that date to the end of the year, the credit will be determined based on the remaining monthly average of full-time employees subject to the Mississippi income tax withholding. For each year thereafter, the number of new full-time jobs created shall be determined by calculating the monthly average number of full-time employees subject to the Mississippi income tax withholding for the year. For every year subsequent to the year the commencement date occurs, the credit is not allowed for any year in which the overall monthly average number of full-time employees subject to the Mississippi income tax withholding falls below the minimum jobs requirement provided in Section 57-75-5(f) (xviii). The State Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations.

(2) For the first five (5) years in which a tax credit is claimed under this section, any tax credit claimed but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned. For the remainder of the ten-year period, any tax credit claimed under this section but not used in any taxable year may be carried forward for three (3) consecutive years from the close of the tax year in which the credits were earned. The credit that may be utilized each year shall be

limited to an amount not greater than the total state income tax liability of the enterprise that is generated by, or arises out of, the project.

(3) The tax credits provided for in this section shall be in lieu of the tax credits provided for in Section 57-73-21 and any enterprise utilizing the tax credit authorized in this section shall not utilize the tax credit authorized in Section 57-73-21.

SOURCES: Laws, 2005, ch. 315, § 6, eff from and after Jan. 1, 2005.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

§ 27-7-22.19. Job tax credit for integrated suppliers located on the site of certain projects.

(1) Integrated suppliers are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to One Thousand Dollars ($1,000.00) annually for each net new full-time employee for five (5) years from the date the credit commences; however, if the integrated supplier is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the integrated supplier is unable to maintain the required number of employees, the commissioner may extend this time period for not more than two (2) years. The credit shall commence on the date selected by the integrated supplier; provided, however, that the commencement date shall not be more than five (5) years from the date the integrated supplier commences commercial production. For the year in which the commencement date occurs, the number of new full-time jobs shall be determined by using the monthly average number of full-time employees subject to Mississippi income tax withholding. Thereafter, the number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those integrated suppliers that increase employment by twenty (20) or more are eligible for the credit. The credit is not allowed during any of the five (5) years if the net employment increase falls below twenty (20); however, if the integrated supplier is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the integrated supplier is unable to maintain the required number of employees, the commissioner may waive the employment requirement for a period of time not to exceed two (2) years. The State Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of twenty (20).

(2) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned; however, if the integrated supplier is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the integrated supplier is unable to use the existing carryforward, the commissioner may extend the period that

the credit may be carried forward for a period of time not to exceed two (2) years. The credit that may be utilized each year shall be limited to an amount not greater than fifty percent (50%) of the taxpayer's state income tax liability which is attributable to income derived from operation in the state for that year.

(3) The tax credits provided for in this section shall be in lieu of the tax credits provided for in Section 57-73-21, and any integrated supplier utilizing the tax credit authorized in this section shall not utilize the tax credit authorized in Section 57-73-21.

(4) As used in this section the term "integrated supplier" means a supplier located on the project site which provides goods or services on the project site solely for a project as defined in Section 57-75-5(f)(iv)1.

SOURCES: Laws, 2000, 3rd Ex Sess, ch. 1, § 2; Laws, 2002, ch. 555, § 1; Laws, 2007, ch. 445, § 1, eff from and after July 1, 2007.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

Job tax credit for corporations, see § 57-73-21.

§ 27-7-22.20. Investment tax credit for business enterprises owning or operating certain projects with an initial capital investment of at least $600,000,000.

(1) An enterprise owning or operating a project as defined in Section 57-75-5(f) (xviii) is allowed an annual investment tax credit for taxes imposed by Section 27-7-5 equal to seven and one-half percent (7-½%) of the eligible investments made by the enterprise. The credit shall commence on the date selected by the enterprise; provided, however, that the commencement date shall not be more than two (2) years from the date the project becomes fully operational. For the purposes of this section, the term "eligible investment" means the amount of investment in a project as defined in Section 57-75-5(f) (xviii) that is greater than Four Hundred Million Dollars ($400,000,000.00) and used in the initial establishment of the project.

(2) Any tax credit claimed under this section but not used in any taxable year may be carried forward for ten (10) consecutive years from the close of the tax year in which the credits were earned. The credit that may be utilized in any one tax year shall be limited to an amount not greater than the total state income tax liability of the enterprise for that year that is generated by, or arises out of, the project.

(3) The credit received under this section is subject to recapture if the property for which the tax credit was received is disposed of, or converted to, other than business use. The amount of the credit subject to recapture is one hundred percent (100%) of the credit in the first year and fifty percent (50%) of the credit in the second year. This subsection shall not apply in cases in which an entire facility is sold.

SOURCES: Laws, 2005, ch. 315, § 7, eff from and after Jan. 1, 2005.

§ 27-7-22.21. Income tax credit for donations of land or interest in land considered priority site for conservation under Mississippi Natural Heritage Program or adjacent to and along a stream fully nominated to Mississippi Scenic Streams Stewardship Program.

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

(a) "Eligible land" means nonindustrial private lands in the state that are adjacent to and along a stream which is fully nominated to the Mississippi Scenic Streams Stewardship Program, or nonindustrial private lands in the state which are considered to be priority sites for conservation under the Mississippi Natural Heritage Program.

(b) "Eligible owner" means a private individual, group or association other than a private corporation, or any subsidiary thereof, which manufactures products or provides public utility services of any type.

(c) "Interest in land" means any right in real property, including access thereto or improvements thereon, or water, including, but not limited to, a fee simple easement, a conservation easement, provided such interest complies with the requirements of the United States Internal Revenue Code Section 170(h), partial interest, mineral right, remainder or future interest, or other interest or right in real property.

(d) "Land" or "lands" means real property, with or without improvements thereon, rights-of-way, water and riparian rights, easements, privileges and all other rights or interests of any land or description in, relating to, or connected with real property.

(e) "Allowable transaction costs" mean the costs of the appraisal of the lands or interests in lands, including conservation easements, that are being donated, of the baseline survey of the natural features, animals and plants present on the site, of engineering and surveying fees, of maintenance fees, of monitoring fees and of legal fees, including the costs of document preparation, title review and title insurance.

(f) "Specified conservation purposes" mean the preservation of stream bank habitats and the stability of stream banks, or the protection of land necessary because of high biodiversity significance or high protection urgency due to the presence of exemplary natural communities or species of special concern, including threatened or endangered species.

(2) For the taxable years beginning on or after January 1, 2003, for any income taxpayer who is an eligible owner, a credit against the taxes imposed by this chapter shall be allowed in the amounts provided in this section upon the donation of land or an interest in land for specified conservation purposes.

(3) The credit provided for in this section shall be fifty percent (50%) of the allowable transaction costs involved in the donation for the tax year in which the allowable transaction costs occur. The aggregate amount of the credit

provided in this section for allowable transaction costs shall not exceed the lesser of Ten Thousand Dollars ($10,000.00) or the amount of tax imposed upon the taxpayer for the taxable year reduced by the sum of all other credits allowable to such taxpayer under this chapter, except credit for tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for ten (10) succeeding tax years. The maximum dollar amount of the credit provided for in this section that an eligible owner may utilize during his lifetime shall be Ten Thousand Dollars ($10,000.00) in the aggregate.

(4) To be eligible for the credit provided for in this section, an eligible owner must demonstrate that the donation qualifies as a conservation contribution under Section 170(h) of the United States Internal Revenue Code of 1986, by means of being a donation in perpetuity, for conservation purposes and made to a qualified holder or donee. A letter from the donee indicating acceptance and a completed copy of the appropriate United States Internal Revenue Service form shall constitute proof of acceptance. The eligible owner also must submit any other documentation that the State Tax Commission may require.

SOURCES: Laws, 2003, ch. 453, § 1, eff from and after Jan. 1, 2003.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

Federal Aspects — Section 170(h) of the Internal Revenue Code, see 26 USCS § 170(h).

§ 27-7-22.22. Income tax credit for use of taxpayer's land as natural area preserve, wildlife refuge, etc. or for public outdoor recreational opportunities.

(1) A credit is allowed against the taxes imposed by this chapter to a taxpayer for allowing land owned by the taxpayer to be used as a natural area preserve, a wildlife refuge or habitat area, a wildlife management area, or for the purpose of providing public outdoor recreational opportunities, as authorized under Section 49-1-29, 49-5-71 or 49-5-155, subject to the following conditions and limitations:

(a) The land may not be under lease to the Mississippi Commission on Wildlife, Fisheries and Parks, and the commission must approve the land as being suitable for the uses described in this section.

(b) The amount of the tax credit allowed by this section shall be Five Dollars and Fifty Cents ($5.50) per acre of land in each taxable year.

(c) In no event shall the amount of the tax credits allowed by this section for a taxable year exceed the taxpayer's liability for those taxes. Any unused credit amount shall be allowed to be carried forward for five (5) years from the close of the taxable year in which the land was approved for such a use. No such credit shall be allowed the taxpayer against prior years' tax liability.

(2) To claim a credit allowed by this section, the taxpayer shall provide any information required by the Mississippi Commission on Wildlife, Fisheries and Parks or the Mississippi Commissioner of Revenue. Every taxpayer claiming a credit under this section shall maintain and make available for inspection by the Mississippi Commission on Wildlife, Fisheries and Parks or the Mississippi Commissioner of Revenue any records that either entity considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(3) Upon approval of the Commission on Wildlife, Fisheries and Parks under subsection (1)(a), a taxpayer seeking to claim any tax credit provided for under this section must submit an application to the Mississippi Commissioner of Revenue for approval of the tax credit. The Mississippi Commissioner of Revenue shall promulgate the rules and forms on which the application is to be submitted. The Mississippi Commissioner of Revenue shall review the application and may approve such application upon determining that it meets the requirements of this section within sixty (60) days after receiving the application.

SOURCES: Laws, 2010, ch. 503, § 1, eff from and after Jan. 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (1) by substituting "49-5-71" for "49-1-71." The Joint Committee ratified the correction at its August 15, 2017, meeting.

Editor's Note — Laws of 2010, ch. 503, § 5, effective January 1, 2010, provides:

"SECTION 5. Section 1 of this act shall be codified as a separate code section in Chapter 7, Title 27, Mississippi Code of 1972."

Laws of 2010, ch. 503, § 6, effective January 1, 2010, provides:

"SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-7-22.23. Income tax credit for utilization of port facilities at state, county and municipal ports for import of cargo.

(1) As used in this section, the term "port" means a state, county or municipal port or harbor established pursuant to Sections 59-5-1 through 59-5-69, Sections 59-7-1 through 59-7-519, Sections 59-9-1 through 59-9-85 or Sections 59-11-1 through 59-11-7.

(2) Subject to the provisions of this section, for any income taxpayer utilizing the port facilities at any port for the import of cargo that is unloaded

from a carrier calling at any such port, a credit against the taxes imposed pursuant to this chapter shall be allowed in the amounts provided in this section. In order to be eligible for the credit authorized under this section, a taxpayer must locate its United States headquarters in Mississippi on or after July 1, 2004, employ at least five (5) permanent full-time employees who actually work at such headquarters and have a minimum capital investment of Two Million Dollars ($2,000,000.00) in Mississippi. For the purposes of this section, "full-time employee" shall mean an employee who works at least thirty-five (35) hours per week.

(3)(a) Except as otherwise provided by subsection (4) of this section, the amount of the credit allowed pursuant to this section shall be the total of the following charges on import of cargo paid by the corporation:

(i) Receiving into the port;

(ii) Handling from a vessel; and

(iii) Wharfage.

(b) The credit allowed pursuant to this section shall not include charges paid by a corporation on the import of forest products.

(4) The credit provided for in this section shall not exceed fifty percent (50%) of the amount of tax imposed upon the taxpayer for the taxable year reduced by the sum of all other credits allowable to such taxpayer under this chapter, except credit for tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five (5) years. The maximum cumulative credit that may be claimed by a taxpayer under this section is limited to One Million Dollars ($1,000,000.00) if the taxpayer employs at least five (5), but not more than twenty-five (25) permanent full-time employees at its headquarters in Mississippi; Two Million Dollars ($2,000,000.00) if the taxpayer employs more than twenty-five (25), but not more than one hundred (100) permanent full-time employees at its headquarters in Mississippi; Three Million Dollars ($3,000,000.00) if the taxpayer employs more than one hundred (100), but not more than two hundred (200) permanent full-time employees at its headquarters in Mississippi; and Four Million Dollars ($4,000,000.00) if the taxpayer employs more than two hundred (200) permanent full-time employees at its headquarters in Mississippi.

(5) To obtain the credit provided for in this section, a taxpayer must provide to the Department of Revenue a statement from the governing authority of the port certifying the amount of charges paid by the taxpayer for which a credit is claimed and any other information required by the Department of Revenue.

SOURCES: Laws, 2004, ch. 530, § 1; Laws, 2006, ch. 562, § 1; Laws, 2010, ch. 391, § 1; Laws, 2011, ch. 427, § 1, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 530, § 3, effective January 1, 2004, provides: "SECTION 3. This act shall stand repealed from and after July 1, 2006."

Laws of 2004, ch. 530, § 3 was repealed by Laws of 2006, ch. 562, § 3, effective July 1, 2006.

Laws of 2004, ch. 530, § 5, effective January 1, 2004, provides:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — State Ports and Harbors, see § 59-5-1 et seq.

County and Municipal Harbors, see § 59-7-1 et seq.

County Port Authority or Development Commission, see § 59-9-1 et seq.

County Port and Harbor Commission, see § 59-11-1 et seq.

§ 27-7-22.24. Mississippi Development Authority to report annually on the impact of the income tax credit granted in § 27-7-22.23.

The Mississippi Development Authority shall report annually to the Legislature regarding the impact of the credit granted in Section 27-7-22.23 on shipping and economic growth. Each report shall show the overall annual increase in shipping at each port for the most recent year for which data is available and for each of the previous five (5) years. Each report shall estimate the number of jobs created or retained at each port and in businesses related to port activity at each port since January 1, 2005, as compared to the number of similar jobs created during the ten (10) years preceding January 1, 2005. Each report shall state the net economic impact on the state as a result of the tax credit provided for in Section 27-7-22.23. The Mississippi Development Authority shall file a copy of the report with the Governor, the Secretary of the Senate, the Clerk of the House of Representatives and the Chairmen of the House Ways and Means Committee and the Senate Finance Committee of the Legislature on May 1 of each year. The Department of Revenue and all state, county and municipal ports shall cooperate with the Mississippi Development Authority in providing the information required in the annual reports.

SOURCES: Laws, 2004, ch. 530, § 2; Laws, 2006, ch. 562, § 2; Laws, 2010, ch. 391, § 2; Laws, 2011, ch. 427, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 2004, ch. 530, § 3, effective January 1, 2004, provided:

"SECTION 3. This act shall stand repealed from and after July 1, 2006."

Laws of 2004, ch. 530, § 3 was repealed by Laws of 2006, ch. 562, § 3, effective July 1, 2006.

Laws, 2004, ch. 530, § 5, effective January 1, 2004, provides:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-7-22.25. Income tax credit for utilization of airport facilities at public airports for export or import of cargo [Repealed effective July 1, 2019].

(1) As used in this section, the term "airport" means an airport established pursuant to Chapters 3 and 5, Title 61, Mississippi Code of 1972.

(2) Subject to the provisions of this section, for any income taxpayer utilizing the facilities at any airport for the export or import of cargo that is unloaded from a carrier at any such airport, a credit against the taxes imposed pursuant to this chapter shall be allowed in the amounts provided in this section. In order to be eligible for the credit authorized under this section, a taxpayer must locate its United States headquarters in Mississippi on or after July 1, 2005, employ at least five (5) new permanent full-time employees who actually work at such headquarters and, after July 1, 2005, invest a minimum of Two Million Dollars ($2,000,000.00), in the aggregate, in real property and/or personal property in Mississippi. For the purposes of this section, "full-time employee" shall mean an employee who works at least thirty-five (35) hours per week.

(3) Except as otherwise provided by subsection (4) of this section, the amount of the credit allowed pursuant to this section shall be the total of the following charges on import or export of cargo paid by the corporation:

(a) Receiving into the airport;

(b) Aircraft marshalling or handling fees; and

(c) Aircraft landing fees.

(4) The credit provided for in this section shall not exceed fifty percent (50%) of the amount of tax imposed upon the taxpayer for the taxable year reduced by the sum of all other credits allowable to such taxpayer under this chapter, except credit for tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five (5) years. The maximum cumulative credit that may be claimed by a taxpayer under this section is limited to One Million Dollars ($1,000,000.00) if the taxpayer employs at least five (5), but not more than twenty-five (25) permanent full-time employees at its headquarters in Mississippi; Two Million Dollars ($2,000,000.00) if the taxpayer employs more than twenty-five (25), but not more than one hundred (100) permanent full-time employees at its headquarters in Mississippi; Three Million Dollars ($3,000,000.00) if the taxpayer employs more than one hundred (100), but not more than two hundred (200) permanent full-time employees at its headquarters in Mississippi; and Four Million Dollars ($4,000,000.00) if the taxpayer employs more than two hundred (200) permanent full-time employees at its headquarters in Mississippi.

(5) To obtain the credit provided for in this section, a taxpayer must provide to the Department of Revenue a statement from the governing authority of the airport certifying the amount of charges paid by the taxpayer for which a credit is claimed and any other information required by the Department of Revenue.

(6) Any taxpayer who is eligible, before July 1, 2019, for the credit provided for in this section, shall remain eligible for such credit after July 1, 2019, notwithstanding the repeal of this section.

SOURCES: Laws, 2005, ch. 442, § 1; Laws, 2006, ch. 465, § 1; reenacted and amended, Laws, 2007, ch. 519, § 1; reenacted and amended, Laws, 2009, ch. 323, § 1; reenacted and amended, Laws, 2012, ch. 377, § 4; reenacted and amended, Laws, 2016, ch. 335, § 4, eff from and after July 1, 2016.

Editor's Note — Laws of 2005, ch. 442, § 3, as amended by Laws of 2007, ch. 519, § 3, as amended by Laws of 2009, ch. 323, § 3, as amended by Laws of 2012, ch. 377, § 6, and as amended by Laws of 2016, ch. 335, § 6, provides as follows:

"SECTION 3. Sections 1 [codified as Section 27-7-22.25] and 2 [codified as Section 27-7-22.26] shall stand repealed from and after July 1, 2019."

Laws of 2005, ch. 442, §§ 4 and 5, effective January 1, 2005, provide:

"SECTION 4. The provisions of this act shall be codified in Chapter 7, Title 27, Mississippi Code of 1972.

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment substituted "July 1, 2019" for "July 1, 2016" both times it appears in (6).

§ 27-7-22.26. Mississippi Development Authority to report annually on the impact of the income tax credit granted in § 27-7-22.25 [Repealed effective July 1, 2019].

The Mississippi Development Authority shall report annually to the Legislature regarding the impact of the credit granted in Section 27-7-22.25 on shipping and economic growth. Each report shall show the overall annual increase in shipping at each airport for the most recent year for which data is available and for each of the previous five (5) years. Each report shall estimate the number of jobs created or retained at each airport and in businesses related to airport activity at each airport since January 1, 2006, as compared to the number of similar jobs created during the ten (10) years preceding January 1, 2006. Each report shall state the net economic impact on the state as a result of the tax credit provided for in Section 27-7-22.25. The Mississippi Development Authority shall file a copy of the report with the Governor, the Secretary of the Senate, the Clerk of the House of Representatives and the Chairmen of the House Ways and Means Committee and the Senate Finance Committee of the Legislature on May 1 of each year. The Department of Revenue and all state, regional, county and municipal airports shall cooperate with the Mississippi Development Authority in providing the information required in the annual reports.

SOURCES: Laws, 2005, ch. 442, § 2; reenacted without change, Laws, 2007, ch. 519, § 2; reenacted without change, Laws, 2009, ch. 323, § 2; reenacted without change, Laws, 2012, ch. 377, § 5; reenacted and amended, Laws, 2016, ch. 335, § 5, eff from and after July 1, 2016.

Editor's Note — Laws of 2005, ch. 442, § 3, as amended by Laws of 2007, ch. 519, § 3, as amended by Laws of 2009, ch. 323, § 3, as amended by Laws of 2012, ch. 377, § 6, and as amended by Laws of 2016, ch. 335, § 6, provides as follows:

"SECTION 3. Sections 1 [codified as Section 27-7-22.25] and 2 [codified as Section 27-7-22.26] shall stand repealed from and after July 1, 2019."

Laws of 2005, ch. 442, §§ 4 and 5, effective January 1, 2005, provide as follows:

"SECTION 4. The provisions of this act shall be codified in Chapter 7, Title 27, Mississippi Code of 1972.

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment substituted "Department of Revenue" for "State Tax Commission" in the last sentence.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

§ 27-7-22.27. Income tax job credit for certain business enterprises in areas within municipalities certified as economically distressed communities; definitions; designation as economically distressed community; certification of status; amount of tax credit; eligibility.

(1) As used in this section:

(a) "Business enterprises" means entities primarily engaged in:

(i) Manufacturing, processing, warehousing, distribution, wholesaling and research and development, or

(ii) Permanent business enterprises designated by rule and regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final destination or resort hotels having a minimum of one hundred fifty (150) guest rooms, recreational facilities that impact tourism, movie industry studios, telecommunications enterprises, data or information processing enterprises or computer software development enterprises or any technology intensive facility or enterprise.

(b) "Economically distressed community" means an area within a municipality that contains groupings of census tracts that include and are contiguous to the central business district, where within such census tract groupings at least thirty percent (30%) of the residents have incomes that are less than the national poverty level as published by the United States Bureau of the Census in the most recent decennial census for which data is available; in which the unemployment rate is at least one and one-half (1-½) times greater than the national average, as determined by the most recent data from the United States Bureau of Labor Statistics, including estimates of unemployment developed using the calculation method of the United States Bureau of Labor Statistics Census Share; and

(i) The municipal population of which is at least four thousand (4,000) if any portion of the municipality is located within a metropolitan area with a population of fifty thousand (50,000), or more; or

(ii) The municipal population of which is at least one thousand (1,000) if no portion of the municipality is located within a metropolitan area with a population of fifty thousand (50,000), or more.

(c) "Telecommunications enterprises" means entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprises."

(2) The governing authorities of a municipality may designate an area within such municipality as an economically distressed community.

(3) Upon designation of an area within a municipality as an economically distressed community, the governing authorities of a municipality shall apply to the State Tax Commission for certification of the area as an economically distressed community. Such application shall provide the information necessary to establish certification as an economically distressed community. The State Tax Commission shall certify an area within a municipality as an economically distressed community if it finds that the designation meets the criteria provided for in subsection (1)(b) of this section.

(4) Permanent business enterprises in areas within municipalities certified by the State Tax Commission as economically distressed communities are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to ten percent (10%) of the payroll of the enterprise for net new full-time employee jobs for five (5) years beginning with years two (2) through six (6) after the creation of the minimum number of jobs required by this subsection. The number of new full-time jobs must be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those permanent business enterprises that increase employment by ten (10) or more in an economically distressed community are eligible for the credit. Credit is not allowed during any of the five (5) years if the net employment increase falls below ten (10). The State Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above the minimum level of ten (10).

(5) Tax credits for five (5) years for the taxes imposed by Section 27-7-5 shall be awarded for additional net new full-time jobs created by business

enterprises qualified under this section. The State Tax Commission shall adjust the credit allowed in the event of payroll fluctuations during the additional five (5) years of credit.

(6) The sale, merger, acquisition, reorganization, bankruptcy or relocation from one (1) county to another county within the state of any business enterprise may not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The State Tax Commission shall determine whether or not qualifying net increases or decreases have occurred or proper transfers of credit have been made and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(7) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) years from the close of the tax year in which the qualified jobs were established but the credit established by this section taken in any one (1) tax year must be limited to an amount not greater than fifty percent (50%) of the taxpayer's state income tax liability which is attributable to income derived from operations in the state for that year.

(8) No business enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive the tax credits provided in this section.

(9) The credits allowed under this section shall not be used by any business enterprise or corporation other than the business enterprise actually qualifying for the credits.

(10) A business enterprise that receives a tax credit under this section shall not be eligible for the tax credit authorized in Section 57-73-21(2), (3) and (4).

SOURCES: Laws, 2005, ch. 520, § 1, eff from and after Jan. 1, 2005.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

§ 27-7-22.28. Job tax credit for certain producers of alternative energy definitions.

As used in Sections 27-7-22.28 and 27-7-22.29, the following terms and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Alternative energy project" means a business enterprise engaged in manufacturing or producing alternative energy in this state with not less than fifty percent (50%) of the finished product being derived from resources or products from this state.

(b) "Authority" means the Mississippi Development Authority.

(c) "Producer" means a manufacturer or producer of alternative energy through an alternative fuels project.

(d) "State" means the State of Mississippi.

SOURCES: Laws, 2005, 3rd Ex Sess, ch. 1, § 56, eff from and after July 1, 2005.

Cross References — Mississippi Development Authority, generally, see § 57-1-1 et seq.

Business or other entity convicted of intentionally hiring illegal immigrants is ineligible to receive any form of assistance made available under Sections 1 through 57 of Chapter 1, Laws of 2005, 3rd Ex. Sess., see § 57-1-371.

§ 27-7-22.29. Job tax credit for certain producers of alternative energy — general provisions.

(1) Producers are allowed a job tax credit for taxes imposed by Section 27-7-5 equal to One Thousand Dollars ($1,000.00) annually for each net new full-time employee job for a period of twenty (20) years from the date the credit begins; however, if the producer is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the producer is unable to maintain the required number of employees, the commissioner may extend this time period for not more two (2) years. The credit shall begin on the date selected by the producer; however, the beginning date shall not be more than five (5) years from the date the producer begins manufacturing or producing alternative energy. For the year in which the beginning date occurs, the number of new full-time jobs shall be determined by using the monthly average number of full-time employees subject to the Mississippi income tax withholding. Thereafter, the number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Once a producer creates twenty-five (25) or more new full-time employee jobs, the producer shall be eligible for the credit; however, if the producer is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the producer is unable to maintain the required number of employees, the commissioner may waive the employment requirement for a period of time not to exceed two (2) years. The credit is not allowed for any year of the twenty-year period in which the overall monthly average number of full-time employees subject to the Mississippi income tax withholding falls below twenty-five (25). The State Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above twenty-five (25).

(2) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned; however, if the producer is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the producer is unable to use the existing carryforward, the commissioner may extend the period that the credit may be carried forward for a period of time not to exceed two (2) years. The credit that may be utilized each year shall be limited to an amount not greater than the total state income tax liability of the producer that is generated by, or arises out of, the alternative energy project.

(3) The tax credits provided for in this section shall be in lieu of the tax credits provided for in Section 57-73-21 and any producer utilizing the tax credit authorized in this section shall not utilize the tax credit authorized in Section 57-73-21.

SOURCES: Laws, 2005, 3rd Ex Sess, ch. 1, § 57; Laws, 2007, ch. 446, § 1, eff from and after July 1, 2007.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

Business or other entity convicted of intentionally hiring illegal immigrants is ineligible to receive any form of assistance made available under Sections 1 through 57 of Chapter 1, Laws of 2005, 3rd Ex. Sess., see § 57-1-371.

§ 27-7-22.30. Manufacturing investment tax credit for manufacturing enterprises that have operated in Mississippi for not less than two years.

(1) As used in this section:

(a) "Manufacturing enterprise" means an enterprise that:

(i) Falls within the definition of the term "manufacturer" in Section 27-65-11; and

(ii) Has operated in this state for not less than two (2) years prior to application for the credit authorized by this section; and

(b) "Eligible investment" means an investment of at least One Million Dollars ($1,000,000.00) in buildings and/or equipment for the manufacturing enterprise.

(2) A manufacturing enterprise is allowed a manufacturing investment tax credit for taxes imposed by Section 27-7-5 equal to five percent (5%) of the eligible investments made by the manufacturing enterprise.

(3) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) years from the close of the tax year in which the eligible investment was made, but the credit established by this section taken in any one tax year shall not exceed fifty percent (50%) of the taxpayer's state income tax liability which is attributable to income derived from operations in the state for that year reduced by the sum of all other income tax credits allowable to the taxpayer, except credit for tax payments made by or on behalf of the taxpayer.

(4) The maximum credit that may be claimed by a taxpayer on any project shall be limited to One Million Dollars ($1,000,000.00).

(5) The credit received under this section is subject to recapture if the property for which the tax credit was received is disposed of, or converted to, other than business use. The amount of the credit subject to recapture is one hundred percent (100%) of the credit in the first year and fifty percent (50%) of the credit in the second year. This subsection shall not apply in cases in which an entire facility is sold.

(6) The sale, merger, acquisition, reorganization, bankruptcy or relocation from one (1) county to another county within the state of any manufacturing

enterprise may not create new eligibility in any succeeding business entity, but any unused manufacturing investment tax credit may be transferred and continued by any transferee of the enterprise. The State Tax Commission shall determine whether or not qualifying net increases or decreases have occurred or proper transfers of credit have been made and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(7) No manufacturing enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive the tax credits provided in this section.

(8) The credits allowed under this section shall not be used by any business enterprise or corporation other than the manufacturing enterprise actually qualifying for the credits.

SOURCES: Laws, 2005, 3rd Ex Sess, ch. 1, § 61, eff from and after July 1, 2005.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

§ 27-7-22.31. Income tax credit for certain costs and expenses in rehabilitating eligible property certified as a historic structure or structure in a certified historic district; recapture of credit; applicability of section.

(1) As used in this section:

(a) "Certified historic structure" means a property located in Mississippi that has been:

(i) Listed individually on the National Register of Historic Places; or

(ii) Determined eligible for the National Register of Historic Places by the Secretary of the United States Department of the Interior and will be listed within thirty (30) months of claiming the credit authorized by this section; or

(iii) Property designated a Mississippi Landmark by the Department of Archives and History pursuant to Section 39-7-3 et seq.

(b) "Eligible property" means property located in Mississippi and offered or used for residential or business purposes; however, the term "eligible property" shall not include a single-family dwelling unless:

(i) A certificate evidencing the eligible credit has been issued to the taxpayer by the department prior to July 1, 2016, that applies to such dwelling; or

(ii) The dwelling is designated as a National Historic Landmark under the National Historic Landmarks Program.

(c) "Structure in a certified historic district" means a structure (and its structural components) located in Mississippi which:

(i) Is listed in the National Register of Historic Places; or

(ii) Has been determined eligible for the National Register of Historic Places by the Secretary of the United States Department of the Interior and will be listed within thirty (30) months of claiming the credit authorized by this section; or

(iii) Is located in a registered historic district listed on the National Register of Historic Places or located in a potential district that has been determined eligible for the National Register of Historic Places by the Secretary of the United States Department of the Interior and will be listed within thirty (30) months of claiming the credit authorized by this section, and is certified by the Secretary of the United States Department of the Interior as being of historic significance to the district; or

(iv) Is certified by the Mississippi Department of Archives and History as contributing to the historic significance of:

1. A certified historic district listed on the National Register of Historic Places; or

2. A potential district that has been determined eligible for the National Register of Historic Places by the Secretary of the United States Department of the Interior and will be listed within thirty (30) months of claiming the credit authorized by this section; or

3. A local district that has been certified by the United States Department of the Interior.

(d) "Department" means the Department of Archives and History.

(2) Any taxpayer incurring costs and expenses for the rehabilitation of eligible property, which is a certified historic structure or a structure in a certified historic district, shall be entitled to a credit against the taxes imposed pursuant to this chapter in an amount equal to twenty-five percent (25%) of the total costs and expenses of rehabilitation incurred after January 1, 2006, which shall include, but not be limited to, qualified rehabilitation expenditures as defined under Section 47(c)(2)(A) of the Internal Revenue Code of 1986, as amended, and the related regulations thereunder:

(a) If the costs and expenses associated with rehabilitation exceed:

(i) Five Thousand Dollars ($5,000.00) in the case of an owner-occupied dwelling; or

(ii) Fifty percent (50%) of the total basis in the property in the case of all other properties; and

(b) The rehabilitation is consistent with the standards of the Secretary of the United States Department of the Interior as determined by the department.

(3) Any taxpayer eligible for the credit authorized by this section may claim the credit in phases if:

(a) There is a written set of architectural plans and specifications for all phases of the rehabilitation (written plans outlining and describing all phases of the rehabilitation shall be accepted as written plans and specifications);

(b) The written set of architectural plans and specifications are completed before the physical work on the rehabilitation begins; and

(c) It can reasonably be expected that all phases of the rehabilitation will be completed.

(4)(a)(i) If the amount of the tax credit established by this section exceeds the total state income tax liability for the year in which the rehabilitated property is placed in service, the amount that exceeds the total state income tax liability may be carried forward for the ten (10) succeeding tax years.

(ii) If the amount of the tax credit established by this section exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), the taxpayer may elect to claim a refund in the amount of seventy-five percent (75%) of the excess credit in lieu of the ten-year carryforward. The election must be made in the year in which the rehabilitated property is placed in service. Refunds will be paid in equal installments over a two-year period and shall be made from current collections.

(iii) Refund requests shall be submitted to the Department of Revenue on forms prescribed by the department. Refunds shall be made from current tax collections.

(b) Not-for-profit entities, including, but not limited to, nonprofit corporations organized under Section 79-11-101 et seq. shall be ineligible for the credit authorized by this section. Credits granted to a partnership, a limited liability company taxed as a partnership or multiple owners of property shall be passed through to the partners, members or owners on a pro rata basis or pursuant to an executed agreement among the partners, members or owners documenting an alternative distribution method. Partners, members or other owners of a pass-through entity are not eligible to elect a refund of excess credit in lieu of a carryforward of the credit. However, a partnership or limited liability company taxed as a partnership may elect to claim a refund of excess credit at the entity level on a form prescribed by the Department of Revenue. Additionally, excess tax credits that are attributable to rehabilitated property that was placed in service by a pass-through entity prior to January 1, 2011, and that have previously been allocated to and are held by another pass-through entity prior to January 1, 2011, may be refunded to such other pass-through entity.

(5)(a) To claim the credit authorized pursuant to this section, the taxpayer shall apply to the department which shall determine the amount of eligible rehabilitation costs and expenses and whether the rehabilitation is consistent with the standards of the Secretary of the United States Department of the Interior. The department shall issue a certificate evidencing the eligible credit if the taxpayer is found to be eligible for the tax credit. The taxpayer shall attach the certificate to all income tax returns on which the credit is claimed. The department shall not issue certificates evidencing the eligible credit which, when combined with certificates of eligible credits issued prior to July 1, 2016, will result in credits being awarded in excess of Twelve Million Dollars ($12,000,000.00) in any one (1) state fiscal year.

(b) The aggregate amount of tax credits that may be awarded under this section shall not exceed One Hundred Twenty Million Dollars ($120,000,000.00) and not more than Twelve Million Dollars ($12,000,000.00) may be awarded in any one (1) state fiscal year. A taxpayer who was issued a certificate evidencing the eligible credit by the department prior to July 1, 2016, but who was unable to be awarded the credit due to the limit on the aggregate amount of credits authorized under this section prior to July 1, 2016:

(i) May be awarded the credit so long as the award does not cause the aggregate amount of tax credits awarded to exceed the amounts authorized in this paragraph; and

(ii) Shall be given priority for tax credits awarded after July 1, 2016.

(6)(a) The credit received by a taxpayer pursuant to this section is subject to recapture if:

(i) The property is one that has been determined eligible for the National Register of Historic Places but is not listed on the National Register of Historic Places within thirty (30) months of claiming the credit authorized by this section;

(ii) The potential district in which the property is located is not listed on the National Register of Historic Places within thirty (30) months of claiming the credit authorized by this section; or

(iii) The rehabilitation of the property for which the credit was granted is abandoned.

(b) The taxpayer shall notify the department and the Department of Revenue if any of the situations that subject the credit to recapture occur.

(7)(a) The board of trustees of the department shall establish fees to be charged for the services performed by the department under this section and shall publish the fee schedule. The fees contained in the schedule shall be in amounts reasonably calculated to recover the costs incurred by the department for the administration of this section. Any taxpayer desiring to participate in the tax credits authorized by this section shall pay the appropriate fee as contained in the fee schedule to the department, which shall be used by the department, without appropriation, to offset the administrative costs of the department associated with its duties under this section.

(b) There is hereby created within the State Treasury a special fund into which shall be deposited all the fees collected by the department pursuant to this section. Money deposited into the fund shall not lapse at the end of any fiscal year and investment earnings on the proceeds in such special fund shall be deposited into such fund. Money from the fund shall be disbursed upon warrants issued by the State Fiscal Officer upon requisitions signed by the executive director of the department to assist the department in carrying out its duties under this section.

(8) This section shall only apply to taxpayers:

(a) Who have been issued a certificate evidencing the eligible credit before December 31, 2020; or

(b) Who, before December 31, 2020, have received a determination in writing from the Mississippi Department of Archives and History, in accordance with the department's Historic Preservation Certificate Application, Part 2, that the rehabilitation is consistent with the historic character of the property and that the property meets the United States Secretary of the Interior's Standards for Rehabilitation, or will meet the standards if certain specified conditions are met, and, who are issued a certificate evidencing the eligible credit on or after December 31, 2020.

SOURCES: Laws, 2006, ch. 420, § 1; Laws, 2011, ch. 302, § 1; Laws, 2011, ch. 477, § 1; Laws, 2013, ch. 504, § 1; Laws, 2014, ch. 530, § 38; Laws, 2016, ch. 483, § 1, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 1 of ch. 302, Laws of 2011, effective from and after passage (approved on February 1, 2011), amended this section. Section 1 of ch. 477, Laws of 2011, effective from and after January 1, 2011 (approved March 30, 2011) also amended this section. As set out above, this section reflects the language of Section 1 of ch. 477, Laws of 2011, as consistent with the intent of the Legislature that the substantive amendments to the section contained in ch. 477 control over the amendment by ch. 302, which was passed to extend the automatic repeal date for the section.

Editor's Note — Laws of 2014, § 530, § 47, provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage [April 24, 2014], and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2016 amendment, in (1)(b), added "however...dwelling unless" at the end of the introductory paragraph, and added (i) and (ii); in (5), added the last sentence in (a), rewrote (b), which read: "The aggregate amount of tax credits that may be awarded under this section shall not exceed Sixty Million Dollars ($60,000,000.00)," and added (b)(i) and (ii); and substituted "December 31, 2020" for "December 31, 2017" throughout (8).

Federal Aspects — Section 47(c)(2)(A) of the Internal Revenue Code of 1986, referred to in (2), is codified at 26 U.S.C.S. § 47(c)(2)(A).

§ 27-7-22.32. Income tax credit for certain qualified adoption expenses.

There shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred, not to exceed Two Thousand Five Hundred Dollars ($2,500.00), for each dependent child legally adopted by a taxpayer under the laws of this state during calendar year 2006 or during any calendar year thereafter. The tax credit under this section may be claimed for the taxable year in which the adoption becomes final under the laws of this state. Any tax credit claimed under this section but not used in any taxable year may be carried forward for the three (3) succeeding tax years. A tax credit is allowed under this section for any child for which an exemption is claimed during the same taxable year under Section 27-7-21(e). For the purposes of this section, the term "qualified adoption expenses" means and has the same definition as that term has in 26 USCS 36C.

SOURCES: Laws, 2006, ch. 518, § 1; Laws, 2013, ch. 449, § 1, eff from and after Jan. 1, 2013.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the last sentence of the section. The reference to "26 USCS 23" was changed to "26 USCS Section 36C." The Joint Committee ratified the correction at its August 16, 2012, meeting.

Editor's Note — Laws of 2006, ch. 518, § 2, effective January 1, 2006, provides as follows:

"SECTION 2. Section 1 of this act shall be codified in Chapter 7 of Title 27, Mississippi Code of 1972."

§ 27-7-22.33. Income tax credit for certain long-term care insurance policy premiums; limitations.

(1) A taxpayer shall be allowed a credit against the income taxes imposed under this chapter in an amount equal to twenty-five percent (25%) of the premium costs paid during the taxable year for a qualified long-term care insurance policy as defined in Section 7702B of the Internal Revenue Code that offers coverage to either the individual, the individual's spouse, the individual's parent or parent-in-law, or the individual's dependent as defined in Section 152 of the Internal Revenue Code.

(2) No taxpayer shall be entitled to the credit with respect to the same expended amounts for qualified long-term care insurance which are claimed by another taxpayer.

(3) The credit allowed by this section shall not exceed Five Hundred Dollars ($500.00) or the taxpayer's income tax liability, whichever is less, for each qualified long-term care insurance policy. Any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding year's tax liability.

(4) No credit shall be allowed under this section with respect to any premium for qualified long-term care insurance either deducted or subtracted by the taxpayer in arriving at his net taxable income under this section or with respect to any premiums for qualified long-term care insurance which were excluded from his net taxable income.

SOURCES: Laws, 2007, ch. 357, § 1, eff from and after Jan. 1, 2007.

Editor's Note — Laws of 2007, ch. 357, § 2, effective January 1, 2007, provides:

"SECTION 2. Section 1 of this act shall be codified in Chapter 7, Title 27, Mississippi Code of 1972."

Federal Aspects — Sections 7702B and 152 of the Internal Revenue Code, see 26 USCS §§ 7702B and 152, respectively.

§ 27-7-22.34. Qualified business or industry allowed job tax credit for certain new full-time employee jobs; duration of credits; requirements; carrying forward credit.

(1) As used in this section, "qualified business or industry" means any company that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxii).

(2) A qualified business or industry shall be allowed a job tax credit for taxes imposed by Section 27-7-5 equal to Five Thousand Dollars ($5,000.00) annually for each net new full-time employee job for a period of twenty (20) years from the date the credit commences; however, if the qualified business or industry is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business or industry is unable to maintain the required number of employees, the commissioner may extend this time period for not more than two (2) years. The credit shall commence on the date selected by the business or industry; however, the commencement date shall not be more than six (6) years from the date the business or industry commences commercial production. For the year in which the commencement date occurs, the number of new full-time jobs shall be determined by using the monthly average number of full-time employees subject to the Mississippi income tax withholding. Thereafter, the number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. Once a qualified business or industry creates or increases employment by five hundred (500) or more, such business or industry shall be eligible for the credit. The credit is not allowed for any year of the twenty-year period in which the overall monthly average number of full-time employees subject to the Mississippi income tax withholding falls below five hundred (500); however, if the qualified business or industry is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business or industry is unable to maintain the required number of employees, the commissioner may waive the employment requirement for a period of time not to exceed two (2) years. The State Tax Commission shall adjust the credit allowed each year for the net new employment fluctuations above five hundred (500).

(3) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned; however, if the qualified business or industry is located in an area that has been declared by the Governor to be a disaster area and as a direct result of the disaster the business or industry is unable to use the existing carryforward, the commissioner may extend the period that the credit may be carried forward for a period of time not to exceed two (2) years. The credit that may be utilized each year shall be limited to an amount not greater than the total state income tax liability of the qualified business or industry that is generated by, or arises out of, the project.

(4) The tax credits provided for in this section shall be in lieu of the tax credits provided for in Section 57-73-21 and any qualified business or industry utilizing the tax credit authorized in this section shall not utilize the tax credit authorized in Section 57-73-21.

SOURCES: Laws, 2007, 1st Ex Sess, ch. 1, § 10, eff from and after passage (approved May 11, 2007.)

Editor's Note — Laws of 2007, 1st Ex Sess, ch. 1, § 11, effective May 11, 2007, provides as follows:

"SECTION 11. Section 12 of this act shall be codified in Chapter 7, Title 27, Mississippi Code of 1972."

§ 27-7-22.35. Investment tax credit for enterprises owning or operating certain electric and thermal energy producing facilities.

(1) As used in this section:

(a) "Eligible facility" means and includes a new facility that creates at least twenty (20) full-time jobs with a minimum capital investment from private sources of Fifty Million Dollars ($50,000,000.00), that:

(i) Consists of all components necessary for the production of electric energy from the direct firing or co-firing of biomass or waste heat recovery, and if applicable, other energy sources;

(ii) Produces both electric energy and useful thermal energy, such as heat or steam, through the sequential use of energy (cogeneration); and

(iii) Consists of all components necessary for the production of synfuel.

An eligible facility includes all burners and boilers, any handling and delivery equipment that supplies fuel directly to and is integrated with such burners and boilers, steam headers, turbines, generators, property used for the collection, processing or storage of biomass or synfuel, transformers, pipelines and all other property used in the transmission of electricity or synfuel and related depreciable property.

(b) "Biomass" means and includes any of the following:

(i) Forest-related mill residues, pulping by-product and other by-products of wood processing, thinnings, slash, limbs, bark, brush and other cellulosic plant material or nonmerchantable forest-related products;

(ii) Solid wood waste materials, including dunnage, manufacturing and construction wood wastes, demolition and storm debris and landscape or right-of-way trimmings;

(iii) Agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar and other crop by-products or residues and livestock waste nutrients;

(iv) All plant and grass material that is grown exclusively as a fuel for the production of electricity;

(v) Refuse derived fuels consisting of organic components and fibers of waste water treatment solids; or

(vi) Whole trees.

(c) "Synfuel" means any liquid or gaseous fuel obtained from biomass.

(d) "Waste heat recovery" means systems that produce electricity from currently unused waste heat resulting from combustion or other processes and which do not use an additional combustion process. The term does not include any system whose primary purpose is the generation of electricity.

(2) An enterprise owning or operating an eligible facility is allowed an annual investment tax credit for taxes imposed by Section 27-7-5 equal to five percent (5%) of investments made by the enterprise in the initial establishment of an eligible facility. The credit shall commence on the date selected by the enterprise; provided, however, that the commencement date shall not be more than two (2) years from the date the eligible facility becomes fully operational.

(3) Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned. The credit that may be utilized in any one (1) tax year shall be limited to an amount not greater than fifty percent (50%) of the total state income tax liability of the enterprise for that year that is generated by, or arises out of, the eligible facility.

SOURCES: Laws, 2009, ch. 512, § 1, eff from and after passage (approved Apr. 7, 2009.)

§ 27-7-22.36. Job tax credit for enterprises owning or operating an upholstered household furniture manufacturing facility for each full-time employee employed in new cut and sew job [Repealed effective January 1, 2019].

(1) As used in this section:

(a) "Full-time employee" means an employee that works at least thirty-five (35) hours per week.

(b) "New cut and sew job" means a job in which the employee cuts and sews upholstery for upholstered household furniture and which job did not exist in this state before January 1, 2010.

(2) Any enterprise owning or operating an upholstered household furniture manufacturing facility is allowed a job tax credit for taxes imposed by this chapter equal to Two Thousand Dollars ($2,000.00) annually for each full-time employee employed in a new cut and sew job for a period of five (5) years from the date the credit commences. The credit shall commence on the date selected by the enterprise. For the year in which the commencement date occurs, the credit will be determined based on the monthly average number of full-time employees employed in new cut and sew jobs subject to the Mississippi income tax withholding that are employed by the enterprise. For each year thereafter, the number of new cut and sew jobs shall be determined by comparing the monthly average number of full-time employees employed in new cut and sew

jobs subject to the Mississippi income tax withholding for the taxable year with the corresponding period of the prior taxable year. The Department of Revenue shall verify that the jobs claimed by enterprises to obtain the credit meet the definition of the term "new cut and sew job." The Department of Revenue shall adjust the credit allowed each year for employment fluctuations.

(3) The credit that may be used each year shall be limited to an amount not greater than the total state income tax liability of the enterprise. Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the credits were earned.

(4) The tax credits provided for in this section shall be in lieu of the tax credits provided for in Section 57-73-21 and any enterprise using the tax credit authorized in this section shall not use the tax credit authorized in Section 57-73-21.

(5) Any taxpayer who is eligible for the credit authorized in this section prior to January 1, 2019, shall be eligible for the credit authorized in this section, notwithstanding the repeal of this section, and shall be allowed to carry forward the credit after January 1, 2019, as provided for in subsection (3) of this section.

(6) This section shall be repealed from and after January 1, 2019.

SOURCES: Laws, 2010, ch. 432, § 1; Laws, 2012, ch. 378, § 1; Laws, 2016, ch. 378, § 1, eff from and after Jan. 1, 2016.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the last sentence of subsection (2) by substituting "Department of Revenue" for "State Tax Commission." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Note — Laws of 2010, ch. 432, § 2, effective January 1, 2010, provides:

"SECTION 2. Section 1 of this act shall be codified in Chapter 7, Title 27, Mississippi Code of 1972."

Amendment Notes — The 2016 amendment, effective January 1, 2016, substituted "January 1, 2019" for "January 1, 2016" twice in (5) and once in (6).

§ 27-7-22.37. Income tax credit for qualified prekindergarten program support contributions.

(1) There shall be allowed as a credit against the tax imposed by Section 27-7-5 the amount of the qualified prekindergarten program support contributions paid to approved providers, lead partners or collaboratives, not to exceed One Million Dollars ($1,000,000.00), by any individual, corporation or other entity having taxable income under the laws of this state during calendar year 2013 or during any calendar year thereafter. In order to qualify for a tax credit, such contributions may support the local match requirement of approved providers, lead partners or collaboratives as is necessary to match state-appropriated funds, and any such providers, lead partners or collaboratives shall be approved by the State Department of Education.

(2) Any unused portion of the credit may be carried forward for three (3) tax years.

(3) Any prekindergarten program support contribution shall be verified by submission to the Mississippi Department of Revenue of a copy of the receipt provided to the donor taxpayer by the prekindergarten program recipient or such other written verification as may be required by the Department of Revenue.

(4) The maximum amount of donations accepted by the Department of Revenue in calendar year 2014 shall not exceed Eight Million Dollars ($8,000,000.00), in calendar year 2015 shall not exceed Fifteen Million Dollars ($15,000,000.00), and in calendar year 2016 and calendar years thereafter shall not exceed Thirty-two Million Dollars ($32,000,000.00), or what is appropriated by the Legislature to fund Chapter 493, Laws of 2013, each year.

(5) The Mississippi Department of Revenue shall promulgate rules necessary to effectuate the purposes of Chapter 493, Laws of 2013. Such rules shall include a means of informing the public of the existence of the prekindergarten support program and the application process for provider, lead partner and collaborative candidates.

SOURCES: Laws, 2013, ch. 493, § 6, eff from and after July 1, 2013.

Editor's Note — Chapter 493, Laws of 2013, referred to in subsections (4) and (5), also amended Sections 37-7-301, 37-21-3, 37-21-5, 37-21-51 and 37-21-53 and repealed Section 37-21-55.

§ 27-7-22.38. Income tax credit for taxpayers employing certain honorably discharged veterans [Repealed effective January 1, 2018].

(1) Subject to the provisions of this section, a taxpayer that employs a person who is a new hire employed after January 1, 2015, who is an honorably discharged veteran, as defined in Title 38 of the United States Code, who served on active duty in the Armed Forces of the United States on or after September 11, 2001, and who has been unemployed for six (6) consecutive months immediately prior to being employed by the taxpayer, shall be allowed an annual credit against the taxes imposed under this chapter. The credit shall be for an annual amount equal to ten percent (10%) of the annual wages (as defined in Section 27-7-303) paid to each person so employed or Two Thousand Dollars ($2,000.00), whichever is the lesser, for each person so employed, for five (5) years. The credit may be claimed by the taxpayer once for each person hired. The tax credit may not be claimed for hiring a person whose employment was previously utilized to claim the tax credit. The tax credit shall not exceed the amount of tax imposed upon the taxpayer for the taxable year reduced by the sum of all other credits allowable to the taxpayer under this chapter, except credit for tax payments made by or on behalf of the taxpayer. Any tax credit claimed under this section but not used in any taxable year may be carried forward for five (5) consecutive years from the close of the tax year in which the

credits were earned. In order to be eligible to claim a tax credit for an employee, the taxpayer must employ the employee for at least six (6) consecutive months during the year for which the credit is claimed and the employee must work an average of at least thirty (30) hours per week for the taxpayer during that time.

(2) The tax credits provided for in this section shall be in addition to any other credit authorized under law.

(3) The aggregate amount of tax credits that may be awarded under this section shall not exceed One Million Dollars ($1,000,000.00).

(4) Any taxpayer who is eligible for the credit authorized in this section before January 1, 2018, shall be eligible for the credit authorized in this section, notwithstanding the repeal of this section, and shall be allowed to carry forward the credit after January 1, 2018, as provided for in subsection (1) of this section.

(5) This section shall be repealed from and after January 1, 2018.

SOURCES: Laws, 2015, ch. 449, § 1, eff from and after Jan. 1, 2016.

Editor's Note — Section 2, Chapter 449, Laws of 2015, effective January 1, 2016, provides:

"SECTION 2. Section 1 of this act shall be codified as a separate section in Chapter 7, Title 27, Mississippi Code of 1972."

§ 27-7-23. Net income of nonresident and foreign taxpayers.

(a) **Definitions.**

(1) "Doing business" means the operation of any business enterprise or activity in Mississippi for financial profit or economic gain, including, but not limited to, the following:

(A) The regular maintenance of an office or other place of business in Mississippi; or

(B) The regular maintenance in Mississippi of an inventory of merchandise or material for sale, distribution or manufacture, regardless of whether kept on the premises of the taxpayer or otherwise; or

(C) The selling or distributing of merchandise to customers in Mississippi directly from a company-owned or operated vehicle when title to the merchandise is transferred from the seller or distributor to the customer at the time of the sale or distribution (transient selling); or

(D) The regular rendering of service to clients or customers in Mississippi in person or by agents or employees; or

(E) The owning, renting or operating of business or income-producing property, real or personal, in Mississippi; or

(F) The performing of contracts, prime or sublet work, for the construction, repair or renovation of real or personal property.

(2) "Business income" means income of any type or class, and from any activity that meets the relationship described in the transactional test or the functional test described in this paragraph (2). The classification of income by occasionally used labels, including, but not limited to, manu-

facturing income, compensation for services, sales income interest, dividends, rents, royalties, gains, operating income, and nonoperating income shall not be considered when determining whether income is business or nonbusiness income. All income of the taxpayer is business income unless clearly classifiable as nonbusiness income. A taxpayer seeking to overcome a classification of income as business income must establish by a preponderance of the evidence that the income has been incorrectly classified.

(A) Transactional test. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business.

(i) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Mississippi, the resulting income of the transaction or activity is business income for Mississippi. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Mississippi.

(ii) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transactions or activity need not be one that frequently occurs in the trade or business, although most frequently occurring transactions or activities shall be considered to be in the regular course of a trade or business. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what the trade or business does.

(B) Functional test. Business income includes income from tangible and intangible property if the acquisition, management and/or disposition of the property constitute integral parts of the taxpayer's regular trade or business operation.

(i) Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It shall be sufficient if the property from which the income is derived is or was an integral, functional, necessary or operative component of the taxpayer's trade or business operations, part of which trade or business is or was conducted within this state.

(ii) Income that is derived from isolated sales, leases, assignments, licenses and other infrequently occurring dispositions, transfers or transactions involving property, including transactions made in liquidation or the winding up of business is business income if the property is or was used in the taxpayer's trade or business operation. Income from the licensing of intangible assets, such as patents, copyrights, trademarks, service marks, goodwill, know-how, trade secrets and similar assets, that were developed or acquired for use by the taxpayer in his trade or business operations, constitute business income whether the licensing itself constituted the operation of a trade or business and whether the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.

(iii) Under the functional test, income from intangible property is business income when the intangible property serves an operating function, as opposed to solely an investment function. The relevant inquiry shall focus on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited solely to an investment function as in the case where the holding of the property is limited to mere financial betterment of the taxpayer in general.

(iv) If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from the property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Mississippi.

(v) If, with respect to an item of property, a taxpayer takes a deduction from business income that is apportioned to Mississippi, or includes that item of property in the property factor, it is presumed that the item of property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of this action.

(vi) Application of the functional test is generally unaffected by the form of the property. Income arising from intangible property is business income when the intangible property itself or the underlying value of the intangible property is or was an integral, functional, necessary or operative component to the taxpayer's trade or business operation. Therefore, while treatment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, establishment of such a relationship is not the exclusive basis for concluding that the income constitutes business income. It is sufficient to support a finding of business income if the holding of the intangible property served an operational rather than an investment function.

(3) "Nonbusiness income" means all income that does not meet the definition of business income.

(4) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(5) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) **Nonresident individuals, partnerships, trusts and estates.**

(1) The tax imposed by this article shall apply to the entire net income of a taxable nonresident derived from employment, trade, business, professional, personal service or other activity for financial gain or profit, performed or carried on within Mississippi, including the rental of real or personal property located within this state or for use herein and including the sale or exchange or other disposition of tangible or intangible property having a situs in Mississippi.

(2) Income derived from trade, business or other commercial activity shall be taxed to the extent that it is derived from such activity within this state. Mississippi net income shall be determined in the manner prescribed by the commissioner for the allocation and/or apportionment of income of foreign corporations having income from sources both within and without the state.

(3) A taxable nonresident shall be allowed to deduct expenses, interest, taxes, losses, bad debts, depreciation and similar business expenses only to the extent that they are allowable under this article and are attributable to the production of income allocable to and taxable by the State of Mississippi. As to allowable deductions essentially personal in nature, such as contributions to charitable organizations, medical expenses, taxes, interest and the optional standard deduction, such taxable nonresident shall be allowed deductions therefor in the ratio that the net income from sources within Mississippi bears to the total net income from all sources of such taxable nonresident, computed as if such taxable nonresident was a resident of Mississippi.

(c) **Foreign corporations, associations, organizations and other entities.**

(1) Corporations and organizations required to file. All foreign corporations and other organizations which have obtained a certificate of authority from the Secretary of State to do business in Mississippi, or corporations or organizations which are in fact doing business in Mississippi, are subject to the income tax levy and are required to file annual income tax returns unless the corporation or organization is specifically exempt from tax by this article.

(2) Allocation and apportionment of income.

(A) Except as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5, 27-7-24.7 and 27-7-24.8, Mississippi Code of 1972, any corporation or organization having business income from business activity which is taxable both within and without this state shall allocate and apportion its net business income as prescribed by regulations enacted by the commissioner. If the business income of the corporation is derived solely from property owned or business done in this state and the corporation is not taxable in another state, the entire business income shall be allocated to this state. A corporation is taxable in another state if, in that state the corporation is subject to a net income tax, or a franchise tax measured by net income, or if that state has jurisdiction to subject the corporation to a net income tax regardless of whether the state does or does not subject the corporation to a net income tax.

(B) If the allocation and apportionment provisions of this section or regulations enacted by the commissioner do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(C) In any instance in which a taxpayer requests or the commissioner requires the use of any of the alternative apportionment methods in subparagraph (B) of this paragraph, the party requesting or requiring the method shall bear the burden of proving by preponderance of the evidence in any administrative or judicial proceeding that the methods set forth in this section or the commissioner's regulations do not fairly represent the extent of the taxpayer's business activity in this state and that the proposed method more fairly represents that activity than any other reasonable method available. The alternative apportionment authority specified in this subparagraph (D) is intended to be invoked only in limited and unique, nonrecurring circumstances where the standard apportionment provisions contained in the statutes and regulations produce unanticipated results that do not fairly represent the extent of the taxpayer's business activity in this state.

(D) The commissioner shall be prohibited from assessing any penalties related to a deficiency arising from requiring the use of an alternative apportionment method under subparagraph (B) of this paragraph unless the commissioner shall establish by preponderance of the evidence that the taxpayer's method was without reasonable basis or was not in accordance with existing statutes or regulations.

(3) Nonbusiness income. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as follows:

(A) Net rents and royalties from real property are allocable to the state in which the property is located.

(B) Net rents and royalties from tangible personal property are allocable to the state in which the property is used, or to this state in their entirety if the corporation's commercial domicile is in this state and the corporation is not organized under the laws of or taxable in the state in which the property is utilized.

(C) Capital gains and losses from sales of real property are allocable to the state in which the property is located.

(D) Capital gains and losses from sales of tangible personal property are allocable to the state in which the property is located, or to this state if the corporation's commercial domicile is in this state and the corporation is not taxable in the state in which the property had a situs.

(E) Capital gains and losses from sales of intangible personal property are allocable to the state of the corporation's commercial domicile.

(F) Interest and dividends are allocable to the state of the corporation's commercial domicile.

(G) Patent and copyright royalties are allocable to the state in which the patent or copyright is utilized by the payer, or to this state if and to the extent that the patent or copyright is utilized by the payer in a state in which the corporation is not taxable and the corporation's commercial domicile is in this state.

(H) Any other nonbusiness income shall be allocated as prescribed by the commissioner.

(I) All expenses connected with earning nonbusiness income, such as interest, taxes, general and administrative expenses and such other expenses relating to the production of nonbusiness income, shall be deducted from gross nonbusiness income. Nonbusiness interest expense shall be computed by using the ratio of nonbusiness assets to total assets applied to total interest expense.

(d) **Foreign lenders.**

(1) In the case of any foreign lender, (corporation, association, organization, individual, partnership, trusts or estates), other than: (A) a foreign insurance company subject to certification by the Commissioner of Insurance, as provided by Section 83-21-1 et seq.; or (B) a foreign lender qualified under the general laws of this state to do business herein; or (C) a foreign lender which maintains an office or place of business within this state; or (D) lenders that sold properties in this state and financed such sale and reported on the installment method, interest income received or accrued on or after January 1, 1977, from loans secured by real estate or from lending on the security of real estate located within this state shall be excluded from Mississippi gross income and exempt from the Mississippi income tax levy and the reporting requirements.

(2) In the case of any foreign lender exempted in paragraph (1) of this subsection, interest income received on any loan finalized or consummated after January 1, 1977, shall be excluded from Mississippi gross income and the net profits derived therefrom shall be exempt from the Mississippi income tax levy for the life of such loan.

(e) **Insurance companies.** Insurance companies, other than life insurance companies, deriving premium income from within and without the state, may determine their Mississippi net income from underwriting by apportioning to this state a part of their total net underwriting income by such processes or formulas of general apportionment as are prescribed by the commissioner; provided that a company adopting this method of reporting for any year must adhere to said method of reporting for subsequent years, unless permission is granted by the commissioner to change to a different method of reporting; and provided that all affiliated companies of the same group shall use the same method of reporting.

(f) **Bond requirements.** Any individual or corporation subject to the tax imposed by this article, engaged in the business of performing contracts which may require the payment of net income taxes, may be required by the commissioner, before entering into the performance of any contract or contracts the consideration of which is more than Ten Thousand Dollars ($10,000.00), to execute and file a good and valid bond with a surety company authorized to do business in this state, or with sufficient sureties to be approved by the commissioner, conditioned that all taxes which may accrue to the State of Mississippi will be paid when due. Provided, however, that such bond shall not exceed five percent (5%) of the total contracts entered into during the taxable period, and, provided further, that any taxpayer, in lieu of furnishing such bond, may pay the maximum sum required herein as advance payment of taxes due on the net income realized from any contract or contracts performed or completed in this state.

SOURCES: Codes, 1942, § 9220-12; Laws, 1934, ch. 120; Laws, 1936, ch. 151; Laws, 1952, ch. 402, § 11; Laws, 1958, ch. 554, § 3; Laws, 1977, ch. 500, § 1; Laws, 1978, ch. 475, § 3; Laws, 1981, ch. 435, § 1; Laws, 1989, ch. 485, § 30; Laws, 1996, ch. 441, § 69; Laws, 2001, ch. 586, § 4; Laws, 2014, ch. 469, § 2; Laws, 2014, ch. 476, § 1, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Section 2 of ch. 469, Laws of 2014, effective from and after January 1, 2014 (approved March 31, 2014), amended this section. Section 1 of ch. 476, Laws of 2014, effective from and after January 1, 2015 (approved April 10, 2014), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 469, Laws of 2014, effective until January 1, 2015, and effective from and after January 1, 2015, the section reflects the language of Section 1 of ch. 476, Laws of 2014, which contains language that specifically provides that it supersedes § 27-7-23 as amended by Chapter 469, Laws of 2014.

Editor's Note — Laws of 2001, ch. 586, §§ 8, 9, effective January 1, 2001, provide as follows:

"SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

"SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Combined tax returns of multistate corporations, see § 27-7-37.

Definition of "income attributable to the state" for purposes of income tax on S corporations, see § 27-8-3.

Regulation of foreign insurance companies, see § 83-21-1 et seq.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.
3. In general.
4. Particular items of income.

1. Validity.

This section is not an unconstitutional delegation of legislative authority to an administrative agency. Columbia Gulf Transmission Co. v. Barr, 194 So. 2d 890 (Miss. 1967).

A legislative delegation to the tax commission of the duty to determine the portion of taxable income of a given person or corporation which should be allocated to sources within the state is a delegation of a fact-finding duty, and where the legislature provided the standard to be followed in evaluating the taxpayer's earned income in Mississippi, as distinguished from its earned income from other sources, such delegation is not unconstitutional. Columbia Gulf Transmission Co. v. Barr, 194 So. 2d 890 (Miss. 1967).

2. Construction and application.

Franchise tax imposed by the Mississippi State Tax Commission was proper where, pursuant to Miss. Code Ann. § 27-7-23(c)(3)(A)(ii), Mississippi could tax sales as it did not violate the commerce clause; the tax had a sufficient nexus with the state, was fairly apportioned, did not discriminate against interstate commerce, and was fairly related to services provided by Mississippi. Miss. State Tax Comm'n v. Murphy Oil USA, Inc., 933 So. 2d 285 (Miss. 2006).

A foreign corporation qualified to conduct insurance business in Mississippi was subject to state income tax upon the interest from its mortgage loan investments secured by real property within Mississippi where the recorded deeds of trust securing the investments were evidence of ownership and where the history of § 27-7-23 evidenced a legislative intent to require only "evidence of ownership" rather than a "business situs" as a condition for the taxation of intangibles. Brady v. John Hancock Mut. Life Ins. Co., 342 So. 2d 295 (Miss. 1977), appeal dismissed, 434 U.S. 804, 98 S. Ct. 32, 54 L. Ed. 2d 61 (1977).

The losses which actually resulted from a foreign gas transmission corporation's activities in exploring for and producing natural gas outside of Mississippi could not be used as deductions in computing its unitary income for Mississippi tax purposes. Tenneco, Inc. v. Barr, 224 So. 2d 208 (Miss. 1969).

The ownership and operation by a foreign corporation of a gas transmission pipeline located partly within and partly without the State of Mississippi is a unitary activity falling within paragraph (1)(c) of this section. Tenneco, Inc. v. Barr, 224 So. 2d 208 (Miss. 1969).

The production, through ownership of other companies, of agricultural, chemical, and paper products, and engaging in other phases of the oil and gas industry, by a foreign gas pipeline corporation were non-unitary activities for the purposes of this section. Tenneco, Inc. v. Barr, 224 So. 2d 208 (Miss. 1969).

Where borrowed funds were used in both unitary and non-unitary activities of a foreign corporation and could not be accurately or directly allocated in any certain amount to either in a specific or realistic sense, it became necessary to utilize a formula to make an equitable apportionment of the interest expense between the two for the purpose of determining the corporation's income tax due the State of Mississippi. Tenneco, Inc. v. Barr, 224 So. 2d 208 (Miss. 1969).

The interest cost of borrowed funds definitely shown to have been used exclusively in one or more of a foreign corporation's non-unitary businesses would not be deductible from unitary gross income for Mississippi income tax purposes. Tenneco, Inc. v. Barr, 224 So. 2d 208 (Miss. 1969).

The burden of proof is upon the taxpayer to show that a formula and its application are unfair, and that an excessive portion of its net income is thereby allocated to a given state. Columbia Gulf Transmission Co. v. Barr, 194 So. 2d 890 (Miss. 1967).

In the formula prescribed by the tax commissioner pursuant to this section, for ascertaining the proportion of the income of a manufacturing corporation having plants in Mississippi and in other states which is taxable in Mississippi, a factor which is the ratio between manufacturing assets in Mississippi as defined in the regulation to total manufacturing assets, does not permit the use of total capital assets in computing the tax liability, but only the use of the value of tangible property actually used in manufacturing. This does not result in taxation of assets outside Mississippi. Reliance Mfg. Co. v. Barr, 245 Miss. 86, 146 So. 2d 569 (1962).

A foreign corporation which had entered the state and employed men who repaired and replaced parts of its machines, failed to show that the formula of apportionment of income used by the tax commission resulted in extra-territorial values being taxed. Stapling Machs. Co. v. Monaghan, 232 Miss. 484, 99 So. 2d 649 (1958), corrected, 232 Miss. 492, 101 So. 2d 359 (1958).

3. In general.

Neither Code 1942, § 9231 nor Code 1942, § 9222 imposing a tax on the net income of a foreign corporation attributable to its activities and ownership of property in Mississippi, although such property was used exclusively in the furtherance of the corporation's interstate business, violated the commerce clause of the federal constitution. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

Code 1942, § 9231 and Code 1942, § 9222 imposed a tax on the net income of a foreign corporation attributable to its activities and ownership of property in Mississippi, although such property was used exclusively in the furtherance of the corporation's interstate business. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

There is no inconsistency in exacting a license tax for the privilege of doing business in this state and restricting an income tax to business actually done in the state. Lincoln Nat'l Life Ins. Co. v. State Tax Comm'n, 196 Miss. 82, 16 So. 2d 369 (1944), adhered to, 22 So. 2d 416 (Miss. 1945), cert. denied, 326 U.S. 763, 66 S. Ct. 145, 90 L. Ed. 460 (1945).

It would not be permissible to tax that part of a foreign corporation's income which was earned outside of the state. Mississippi Cottonseed Prods. Co. v. Stone, 184 Miss. 409, 184 So. 428 (1938), cert. denied, 306 U.S. 656, 59 S. Ct. 774, 83 L. Ed. 1054 (1939).

The purpose of the Act was to tax income earned within the state by both domestic and foreign corporations, and to exempt income earned without the state, where a plant or place of business was maintained in the foreign state, and the income derived therefrom would not be subject to taxation, or was exempt therefrom. Mississippi Cottonseed Prods. Co. v. Stone, 184 Miss. 409, 184 So. 428 (1938), cert. denied, 306 U.S. 656, 59 S. Ct. 774, 83 L. Ed. 1054 (1939).

Foreign railroad company, engaged in both interstate and intrastate commerce within state, was not liable for income tax before passage of laws 1924 ch. 132. Miller v. Illinois Cent. R. Co., 146 Miss. 422, 111 So. 558 (1927).

4. Particular items of income.

Neither Code 1942, § 9231 nor Code 1942, § 9222 imposing a tax on the net income derived from the sale by foreign corporation of natural gas at wholesale to a nonresident corporation doing business in Mississippi, delivered at various points in Mississippi along such foreign corporation's main pipeline extending from gas field in Louisiana, through Arkansas and Mississippi, and terminating at Memphis, Tennessee, contravenes the commerce clause of the federal constitution. State Tax Comm'n v. Memphis Natural Gas Co., 197 Miss. 583, 19 So. 2d 477 (1944), appeal dismissed, 323 U.S. 682, 65 S. Ct. 440, 89 L. Ed. 553 (1944).

The state has no jurisdiction to exact income tax on premiums received from contracts of reinsurance issued by nonresident reinsurer, licensed to do business in this state, to foreign licensed insurance companies, completed wholly without the state, notwithstanding that original insurance contracts were written in Mississippi, since reinsurer was not doing business in this state in issuing such reinsurance contracts. Lincoln Nat'l Life Ins. Co. v. State Tax Comm'n, 196 Miss. 82, 16 So. 2d 369 (1944), adhered to, 22 So. 2d 416 (Miss. 1945), cert. denied, 326 U.S. 763, 66 S. Ct. 145, 90 L. Ed. 460 (1945).

The state has jurisdiction to exact income tax upon premiums received under reinsurance contracts issued to domestic companies by nonresident insurance company, licensed and authorized to do business in this state. Lincoln Nat'l Life Ins. Co. v. State Tax Comm'n, 196 Miss. 82, 16 So. 2d 369 (1944), adhered to, 22 So. 2d 416 (Miss. 1945), cert. denied, 326 U.S. 763, 66 S. Ct. 145, 90 L. Ed. 460 (1945).

As regards liability of nonresident insurance company, licensed to do business in state, for tax on premiums received from reinsurance contracts issued to foreign licensed companies, the test is whether reinsurer was thereby doing business in Mississippi and not whether it was procuring business from one which had done such business. Lincoln Nat'l Life Ins. Co. v. State Tax Comm'n, 196 Miss. 82, 16 So. 2d 369 (1944), adhered to, 22 So. 2d 416 (Miss. 1945), cert. denied, 326 U.S. 763, 66 S. Ct. 145, 90 L. Ed. 460 (1945).

Interest on loans by a foreign corporation doing business in Mississippi was not exempt under Code 1942, § 9231, it being manifest that it was the purpose of the legislature to place domestic and foreign corporations upon the same basis and that the word "by" in clause with respect to "income from any loan by non-residents or foreign corporations" should be omitted and the word "to" substituted in arriving at the real intention of the legislature. Mississippi Cottonseed Prods. Co. v. Stone, 184 Miss. 409, 184 So. 428 (1938), cert. denied, 306 U.S. 656, 59 S. Ct. 774, 83 L. Ed. 1054 (1939).

RESEARCH REFERENCES

ALR. Comment Note.—Validity, under Federal Constitution, of state tax on, or measured by, income of foreign corporation. 67 A.L.R.2d 1322.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 476-483 (income of nonresidents and foreign corporations).

CJS. 85 C.J.S., Taxation §§ 1979-1988, 1998-2004, 2042-2050.

§ 27-7-24. Allocation and apportionment of income of financial institution with taxable activities within and without state.

(1) Except as otherwise specifically provided, a financial institution whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972. All items of nonbusiness income (income which is not includable in the apportionable income tax base) shall be allocated pursuant to the provisions of Section 27-7-23, Mississippi Code of 1972. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States whose effectively connected income, as defined under the federal Internal Revenue Code, as in effect January 1, 1996, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, Mississippi Code of 1972.

(2) All business income (income which is includable in the apportionable income tax base) shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor (as described in Section 27-7-24.3), property factor (as described in Section 27-7-24.5), and payroll factor (as described in Section 27-7-24.7) together and dividing the sum by three (3). If one (1) of the factors is missing, the two (2) remaining factors are added and the sum is divided by two (2). If two (2) of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero (0), but is not missing merely because its numerator is zero (0).

(3) Each factor shall be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for the taxable year.

(4) If the allocation and apportionment provisions of Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7 do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the commissioner may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

In any instance in which a taxpayer requests or the commissioner requires the use of any of the alternative apportionment methods in this subsection, the party requesting or requiring the method shall bear the burden of proving by preponderance of the evidence in any administrative or judicial proceeding that the methods set forth in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7 do not fairly represent the extent of the taxpayer's business activity in this state and that the proposed method more fairly represents that activity than any other reasonable method available. The alternative apportionment authority specified in this subsection is intended to be invoked only in limited and unique, nonrecurring circumstances where the standard apportionment provisions contained in the statutes and regulations produce unanticipated results that do not fairly represent the extent of the taxpayer's business activity in this state.

(5) The commissioner shall be prohibited from assessing any penalties related to a deficiency arising from requiring the use of an alternative apportionment method under subsection (4) of this section unless the commissioner shall establish by preponderance of the evidence that the taxpayer's method was without reasonable basis or was not in accordance with existing statutes or regulations.

SOURCES: Laws, 1996, ch. 441, § 62; Laws, 2014, ch. 476, § 2, eff from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides: "SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Federal Aspects — Federal Internal Revenue Code, see 26 USCS § 1 et seq.

RESEARCH REFERENCES

Am Jur. 74 Am. Jur. 2d, Taxpayers Actions §§ 1-86.

CJS. 9 C.J.S., Banks §§ 197, 607.

§ 27-7-24.1. Allocation and apportionment of income of financial institution with taxable activities within and without state; definitions.

As used in Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7, unless the context otherwise requires:

(a) "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) "Borrower or credit card holder located in this state" means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business which maintains its commercial domicile in this state, or

(ii) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in this state.

(c) "Commercial domicile" means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile shall be deemed for the purposes of Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7 to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable year.

(d) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services that are included in such employee's gross income under the federal Internal Revenue Code, as in effect January 1, 1996. In the case of employees not subject to the federal Internal Revenue Code, as in effect January 1, 1996, e.g., those employed in foreign countries, the determination of whether such payments would constitute gross income to such employees under the federal Internal Revenue Code, as in effect January 1, 1996, shall be made as though such employees were subject to the federal Internal Revenue Code, as in effect January 1, 1996.

(e) "Credit card" means credit, travel or entertainment card.

(f) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(g) "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) "Financial institution" means:

(i) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended and in effect January 1, 1996, or registered as a savings and loan holding company under the Federal National Housing Act, as amended and in effect January 1, 1996;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 USCS Section 21 et seq., as in effect January 1, 1996;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 USCS Section 1813(b)(1), as in effect January 1, 1996;

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 USCS Sections 611 to 631, as in effect January 1, 1996;

(vi) Any agency or branch of a foreign depository as defined in 12 USCS Section 3101, as in effect January 1, 1996;

(vii) A production credit association organized under the Federal Farm Credit Act of 1933, as in effect January 1, 1996, all of whose stock held by the Federal Production Credit Corporation has been retired;

(viii) Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in subparagraphs (i) through (vii) above other than an insurance company taxable under Section 27-15-81 et seq.

(ix) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subparagraph (ix), a "finance lease" shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases", as in effect January 1, 1996, or any other lease that is accounted for as a financing by a lessor under generally accepted accounting principles.

For the classification provided in this subparagraph (ix) to apply,

A. The average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent (50%) requirement; and

B. Gross income from incidental or occasional transactions shall be disregarded; or,

(x) Any other person or business entity which derives more than fifty percent (50%) of its gross income from activities that a person described in subparagraphs (ii) through (vii) and (ix) above is authorized to transact. For the purpose of this subparagraph (x), the computation of gross income shall not include income from nonrecurring, extraordinary items.

(xi) The commissioner is authorized to exclude any person from the application of subparagraph (x) upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in subparagraphs (ii) through (vii) and (ix) above.

(i) "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property. "Gross rents" shall include, but not be limited to:

(i) Any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise,

(ii) Any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement, and

(iii) A proportionate part of the cost of any improvement to real property made by or on behalf of the taxpayer which reverts to the owner or lessor upon termination of a lease or other arrangement. The amount to be included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight (8) and the value of the building is determined in the same manner as if owned by the taxpayer.

(iv) The following are not included in the term "gross rents":

A. Reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

B. Reasonable amounts payable as service charges for janitorial services furnished by the lessor;

C. Reasonable amounts payable for storage, provided such amounts are payable for space not designated and not under the control of the taxpayer; and

D. That portion of any rental payment which is applicable to the space subleased from the taxpayer and not used by it.

(j) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, and leases treated as loans for federal income tax purposes, under the federal Internal Revenue Code, as in effect January 1, 1996. Loans shall not include: properties treated as loans under Section 595 of the federal Internal Revenue Code, as in effect January 1, 1996; futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; non-interest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a REMIC, as defined by the federal Internal Revenue Code, as in effect January 1, 1996, or other mortgage-backed or asset-backed security; and other similar items.

(k) "Loan secured by real property" means that fifty percent (50%) or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

(*l*) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) "Person" means an individual, estate, trust, partnership, limited liability company, corporation and any other business entity.

(o) "Principal base of operations" with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the principal base of operations means the place of more or less permanent nature from which the employee regularly (i) starts his or her work and to which he or she customarily returns in order to receive instructions from his or her employer, or (ii) communicates with his or her customers or other persons, or (iii) performs any other functions necessary to the exercise of his or her trade or profession at some other point or points.

(p) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively, (i) on which the taxpayer may claim depreciation for federal income tax purposes, pursuant to the Internal Revenue Code, as in effect January 1, 1996, or (ii) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, pursuant to the Internal Revenue Code, as in effect January 1, 1996, (or could claim depreciation if subject to federal income tax, pursuant to the Internal Revenue Code, as in effect January 1, 1996). Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

(q) "Regular place of business" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(r) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States or any foreign country.

(s) "Syndication" means an extension of credit in which two (2) or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(t) "Taxable" means either:

(i) That a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax (including a bank shares tax), a single business tax, or an earned surplus tax, or any tax which is imposed upon or measured by net income; or

(ii) That another state has jurisdiction to subject the taxpayer to any of such taxes regardless of whether, in fact, the state does or does not.

(u) "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers or the like.

SOURCES: Laws, 1996, ch. 441, § 63, eff from and after January 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a statutory reference in (h)(viii). The reference to "Section 25-15-81 et seq." was changed to "Section 27-15-81 et seq." The Joint Committee ratified this correction at its August 5, 2008, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected statutory references in (h) by substituting "12 USCS Section 21 et seq." for "12 U.S.C.S. Sections 21 et seq." in (ii), "12 USCS Section 1813(b)(1)" for "12 U.S.C.S. Sections 1813(b)(1)" in (iii), and "12 USCS Section 3101" for "12 U.S.C. Sections 3101" in (vi). The Joint Committee ratified the corrections at its August 15, 2017, meeting.

Federal Aspects — The Federal Farm Credit Act of 1933, referred to in this section, formerly appeared generally as 12 USCS § 1131 et seq. prior to its repeal by § 5.26(a) of the Farm Credit Act of 1971, Act Dec. 10, 1971, P.L. 92-181, 85 Stat. 624.

Federal National Housing Act, see 12 USCS § 1701 et seq.

Federal Bank Holding Company Act of 1956, see 12 USCS § 1841 et seq.

International Banking Act of 1978, see 12 USCS § 3101 et seq.

Federal Internal Revenue Code, see 26 USCS § 1 et seq.

Section 595 of Internal Revenue Code, see 26 USCS § 595.

Section 1286 of the Internal Revenue Code, see 26 USCS § 1286.

§ 27-7-24.3. Allocation and apportionment of income of financial institution with taxable activities within and without state; receipts factor.

(1) The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts described

herein which constitute business income and are included in the computation of the apportionable income base for the taxable year.

(2) The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within this state on receipts from the sublease of real property if the property is located within this state.

(3)(a) Except as described in paragraph (b) of this subsection, the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

(b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of the receipts that is to be included in the numerator of this state's receipts factor is determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft. If the extent of the use of any transportation property within the state cannot be determined, then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(4)(a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent (50%) of the fair market value of the real property is located within this state. If more than fifty percent (50%) of the fair market value of the real property is not located within any one state, then the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

(b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made and any and all subsequent substitutions of collateral shall be disregarded.

(5) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(6) The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under coupon stripping rules of Section 1286 of the Internal Revenue Code, as in effect January 1, 1996.

(a) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (4) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(b) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(7) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(8) The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(9) The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (7) of this section and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(10) The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(11)(a)(i) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (4) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to subsection (5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest and fees or penalties in the nature of interest from loans not secured by real property.

(b) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include such fees if the borrower is located in this state.

(12) The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section, if a greater proportion of the income producing activity is performed in this state based on cost of performance.

(13)(a) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; future contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in subparagraphs (i) and (ii) of this paragraph (a), the receipts factor shall include the amounts described in such subparagraphs.

(i) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expenses on federal funds purchased and securities sold under repurchase agreements.

(ii) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(b) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities described in paragraph (a) of this subsection that are attributable to this state.

(i) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (i) of paragraph (a) of this subsection (13) from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(iii) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, (but excluding amounts described in subparagraph (i) or (ii) of this paragraph), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (a) of this subsection (13) by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(iv) For purposes of this paragraph, average value shall be determined using the rules for determining the average value of tangible personal property set forth in subsections (3) and (4) of Section 27-7-24.5.

(c) In lieu of using the method set forth in paragraph (b) of this subsection (13), the taxpayer may elect, or the commissioner may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph (c).

(i) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities which are properly assigned to a regular place of business of the taxpayer within the state and the denominator of which is the gross income from all such assets and activities.

(ii) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (i) of paragraph (a) of this subsection (13) from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business and the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(iii) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book and foreign currency transactions, but not excluding amounts described in subparagraphs (i) or

(ii) of this paragraph (c), attributable to this state and included in the numerator is determined by multiplying the amount described in subparagraph (ii) of paragraph (a) of this subsection (13) by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(d) If the taxpayer elects or is required by the commissioner to use the method set forth in paragraph (c) of this subsection (13), it shall use this method on all subsequent returns unless the taxpayer receives prior permission from the commissioner to use, or the commissioner requires a different method.

(e) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the assets or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business and one (1) such regular place of business is in this state and one (1) such regular place of business outside this state, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

(14) The numerator of the receipts factor includes all other receipts pursuant to the rules adopted by the commission.

(15) All receipts which would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

SOURCES: Laws, 1996, ch. 441, § 64; Laws, 2001, ch. 586, § 5, eff from and after Jan. 1, 2001.

Editor's Note — Laws of 2001, ch. 586, §§ 8, 9, effective January 1, 2001, provide as follows:

"SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

"SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act."

Federal Aspects — Federal Internal Revenue Code, see 26 USCS § 1 et seq.

Section 1286 of Internal Revenue Code, see 26 USCS § 1286.

RESEARCH REFERENCES

ALR. State corporate income taxation of foreign dividends. 17 A.L.R.6th 623.

§ 27-7-24.5. Allocation and apportionment of income of financial institution with taxable activities within and without state; property factor.

(1) The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year, the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all such property located or used within and without this state during the taxable year.

(2) The property factor shall include only property the income or expenses of which are included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount) in the computation of the apportionable income base for the taxable year.

(3)(a) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation or amortization.

(b) Loans are valued at their outstanding principal balance without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines which is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this section.

(c) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charge-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

(4) The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two (2). If averaging on this basis does not properly reflect average value, the commissioner may require averaging on a more frequent basis. The taxpayer may elect to average on a more frequent basis. When averaging on a more frequent basis is required by the commissioner or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the

commissioner or the commissioner requires a different method of determining average value.

(5)(a) The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight (8).

(b) Where the use of the general method described in this subsection (5) results in inaccurate valuations of rented property, any other method which properly reflects the value may be adopted by the commissioner or by the taxpayer when approved in writing by the commissioner. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the commissioner or the commissioner requires a different method of valuation.

(6)(a) Except as described in paragraph (b) of this subsection (6), real property and tangible personal property owned by or rented to the taxpayer is considered to be located within this state if it is physically located, situated or used within this state.

(b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state. The extent an aircraft will be deemed to be used in this state and the amount of value that is to be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere. If the extent of the use of any transportation property within this state cannot be determined then the property will be deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle will be deemed to be used wholly in the state in which it is registered.

(7)(a)(i) A loan is considered to be located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

(ii) A loan is properly assigned to the regular place of business with which it has preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

A. The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular place of business consistent with federal or state regulatory requirements;

B. Such assignment on its records is based upon substantive contacts of the loan to such regular place of business; and

C. The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

(iii) The presumption of proper assignment of a loan provided in subparagraph (ii) of paragraph (a) of this subsection (7) may be rebutted upon a showing by the commissioner, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan shall then be located within this state if the taxpayer had a regular place of business within this state at the time the loan was made and the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding such loan did not occur within this state.

(b) In case of a loan which is assigned by the taxpayer to a place without this state which is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by subsection (c) of Section 27-7-24.1, was within this state.

(c) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis and consideration shall be given to such activities as the solicitation, investigation, negotiation, approval and administration of the loan. The terms "solicitation", "investigation", "negotiation", "approval" and "administration" are defined as follows:

(i) "Solicitation" is either active or passive. Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. Such activity is located at the regular place of business which the taxpayer's employee is regularly connected with or working out of, regardless of where the services of such employee were actually performed. Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(ii) "Investigation" is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iii) "Negotiation" is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as the amount, duration, interest rate, frequency of repayment, currency denomination and security required. Such activity is located at a regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed.

(iv) "Approval" is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement. Such activity is located at the regular place of business which the taxpayer's employees are regularly connected with or working out of, regardless of where the services of such employees were actually performed. If the board of directors makes the final determination, such activity is located at the commercial domicile of the taxpayer.

(v) "Administration" is the process of managing the account. This process includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default. Such activity is located at the regular place of business which oversees this activity.

(8) For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of subsection (7) of this section.

(9) A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to said state for the length of the original term of the loan. Thereafter, said loan may be properly assigned to another state if said loan has a preponderance of substantive contact to regular place of business there.

SOURCES: Laws, 1996, ch. 441, § 65, eff from and after January 1, 1997.

§ 27-7-24.7. Allocation and apportionment of income of financial institution with taxable activities within and without state; payroll factor; compensation; employee services.

(1) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without this state during the taxable year. The payroll factor shall include only that compensation which is included in the computation of the apportionable income tax base for the taxable year.

(2) The compensation of any employee for services or activities which are connected with the production of nonbusiness income (income which is not includable in apportionable income base) and payments made to any independent contractor or any other person not properly classifiable as an employee shall be excluded from both the numerator and denominator of the factor.

(3) Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

(a) The employee's services are performed entirely within this state.

(b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. As used in this paragraph, the term "incidental" refers to any service which is temporary or transitory in nature, or which is rendered in connection with any isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(i) If the employee's principal base of operations is within this state; or

(ii) If there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(iii) If the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's resident is in this state.

SOURCES: Laws, 1996, ch. 441, § 66, eff from and after January 1, 1997.

§ 27-7-24.8. Allocation and apportionment of income of major medical or pharmaceutical supplier of Mississippi distribution facility with taxable activities within and without state.

(1) For purposes of the income tax imposed by this chapter, a major medical or pharmaceutical supplier of a Mississippi distribution facility whose business activity is taxable both within and without this state shall apportion its business income (income which is includable in the apportionable tax base) to this state by multiplying such income by an apportionment percentage determined in accordance with this section.

(2) The apportionment percentage of a major medical or pharmaceutical supplier of a Mississippi distribution facility shall be determined by:

(a) Adding together:

(i) A payroll factor, which shall be counted twice,

(ii) A property factor, which shall be counted twice, and

(iii) A sales factor, which shall be counted once; and

(b) Then dividing the sum of such factors by five (5).

(3) The payroll factor, property factor, and sales factor of a major medical or pharmaceutical supplier of a Mississippi distribution facility shall be calculated as follows:

(a) The payroll factor is a fraction, the numerator of which is the total amount paid to employees for services performed in this state for the taxable year and the denominator of which is the total amount paid both within and without this state during the taxable year;

(b) The property factor is a fraction, the numerator of which is the value of real property and tangible personal property rented to the taxpayer that is located or used within this state during the taxable year (valued at eight (8) times the annual rental rate) and the average value of the taxpayer's real and tangible personal property owned that is located or used within this state during the taxable year and the denominator of which is the value of real property and tangible personal property rented to the taxpayer (valued at eight (8) times the annual rental rate) and the average value of the taxpayer's real and tangible personal property owned that is located or used within and without this state during the taxable year; and

(c) The sales factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year.

(4) For purposes of this section:

(a) "Major medical" or "pharmaceutical supplier" means a company or group of affiliated companies (as defined in Section 27-7-37) who ship medical or pharmaceutical products to a Mississippi distribution facility.

(b) "Mississippi distribution facility" means and has the same definition as such term has in Section 27-13-13(2)(d).

SOURCES: Laws, 2014, ch. 469, § 1, eff from and after Jan. 1, 2014.

§ 27-7-25. Partnerships.

Individuals carrying on businesses in partnerships shall be liable for income tax only in their individual capacity, unless for federal purposes the partnership is taxable as a corporation. If so, then the partnership is also taxable as a corporation for state purposes and is subject to all of the corporate tax laws and regulations. The gross income of an individual partner shall be the gross income the partnership distributed on the same basis as net income or earnings may be distributed. If the preceding exception applies, then the partner will be treated as a shareholder in a corporation.

There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year.

The net income of the partnership shall be computed in the same manner and on the same basis as provided for individuals, provided no personal exemption shall be granted and, provided further, that husband and wife partnerships shall not be recognized for the purpose of this article, unless it can be proven that husband and wife have each contributed capital out of their separate estates, and not by gift, from one to the other.

In the case of partnerships, each partner that would otherwise be required to include more than twelve (12) months of income in a single taxable year may elect to include such excess in income in one (1) year or ratably over a period of four (4) taxable years.

In the event the individual partners fail to report and pay the taxes imposed according to this section, then the partnership and the general partners shall be jointly and severally liable for said tax liability and shall be assessed accordingly. However, the partnership and/or general partner shall not be liable if the partnership withholds five percent (5%) of the net gain or profit of the partnership for the tax year and remits the same to the commissioner. Such amounts paid to the commissioner shall be deemed to be payments of estimated tax of the partners and shall be allocated pro rata to the partners' taxpayer accounts. The commissioner may allow, or require, block or composite filing by a partnership, or withholding on a nonresident partner.

Magnetic media reporting may be required in a manner to be determined by the commissioner.

Partnership returns shall be filed in such manner and at such time as prescribed by law.

SOURCES: Codes, 1942, § 9220-13; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 12; Laws, 1958, ch. 554, § 4; Laws, 1985, ch. 521, § 3; Laws, 1987, ch. 438, § 1; Laws, 1988, ch. 391, § 2; Laws, 1989, ch. 485, § 4, eff from and after January 1, 1990.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation §§ 1971-1973, 1981, 1982, 1984, 1989-1992, 2002, 2005, 2045, 2047, 2049, 2050.

§ 27-7-27. Estates and trusts.

(1) The tax imposed under the income tax laws of the State of Mississippi shall apply to the income of estates of any kind or property held in trust except:

(a) That a trust forming part of a pension plan, stock bonus plan, disability or death benefit plan or profit-sharing plan of an employer for the exclusive benefit of some or all of his or its employees, or their beneficiaries, to which contributions are made by such employer, or employees, or both, for the purpose of distributing to such employees, or their beneficiaries, the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under the income tax laws of the State of Mississippi provided that the trust is irrevocable and no part of the trust corpus or income can be used for purposes other than for the exclusive benefit of employees, or their beneficiaries; but any amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds amounts paid in by him.

(b) That all trusts of real or personal property, or real and personal property combined, created under a retirement plan for which provision has been made under the laws of the United States of America exempting such trust from federal income tax, shall be exempt from income taxation by the State of Mississippi.

(2) Notwithstanding the provisions of subsection (1) of this section, a taxpayer shall include any Mississippi unrelated business taxable income in computing its taxable income under this chapter. As used in this subsection "Mississippi unrelated business taxable income" includes:

(a) "Unrelated business taxable income" as defined under the provisions of the Internal Revenue Code, as amended, and not otherwise inconsistent with other provisions of this chapter, and

(b) Any income attributable to an ownership interest in an S corporation.

(3) A trust required to include the activity of a disregarded entity for federal income tax purposes shall do likewise for the purpose of computing income for this state.

(4) Except as otherwise provided in this section, the gross and net income shall be determined in the same manner as is provided by law for any other taxpayer.

SOURCES: Codes, 1942, § 9220-14; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 13; Laws, 1956, ch. 209; Laws, 2002, ch. 478, § 1; Laws, 2008, ch. 433, § 1, eff from and after July 1, 2008.

ATTORNEY GENERAL OPINIONS

A constable may only receive a total of $35.00 in a single criminal case, regardless of the service made in that case. Aldridge, Mar. 31, 2005, A.G. Op. 05-0046.

RESEARCH REFERENCES

ALR. Conflict of laws as to taxation of partnership property. 29 A.L.R.2d 312.

State tax on trust income as affected by foreign elements. 5 A.L.R.3d 606.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 446 (deductions - charitable contributions - trusts).

CJS. 85 C.J.S., Taxation §§ 1993-1997.

§ 27-7-29. Organizations exempt from taxation; taxation of business income unrelated to tax exempt purposes of certain organizations.

(a) Except as otherwise provided in subsection (b) of this section, all income received by the following organizations shall be exempt from taxation under this article:

(1) Fraternal beneficiary societies, orders or associations.

(2) Mutual savings banks, domestic or foreign when organized and operated on a nonprofit basis and for public purposes; and farm loan associations when organized and operated on a nonprofit basis and for public purposes.

(3) Cemetery corporations; religious, charitable, educational or scientific associations or institutions, including any community chest, funds or foundations, organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(4) Business leagues, labor organizations, agricultural or horticultural associations, chambers of commerce, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(5) Civic leagues and social clubs or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(6) Clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(7) Farmers and fruit growers cooperatives or other like organizations organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses and on the basis of the quantity of produce furnished by them, and other nonprofit agricultural associations organized and operated under the provisions of the cooperative marketing laws of this state. Corporations that are treated as cooperatives for federal income tax purposes will be exempt from income taxation under this chapter to the same extent as provided for federal income tax purposes.

(8) Nonprofit cooperative electric power associations or corporations, or like associations, when organized and operated for public purposes and when no part of the income inures to the benefit of any private stockholder or individual.

(9) Any nonprofit corporation that is required to be organized and formed for the purpose of operating and managing the state's prison industries.

(b) Any Mississippi unrelated business taxable income shall be included in taxable income for any organization described in this section. As used in this subsection "Mississippi unrelated business taxable income" includes:

(1) "Unrelated business taxable income" as defined under the provisions of the Internal Revenue Code, as amended, and not otherwise inconsistent with other provisions of this chapter, and

(2) Any income attributable to an ownership interest in an S corporation.

SOURCES: Codes, 1942, § 9220-15; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 14; Laws, 1973, ch. 504, § 4; Laws, 1978, ch. 410, § 1; Laws, 1986, ch. 393, § 4; Laws, 1987, ch. 438, § 2; Laws, 1988, ch. 391, § 3; Laws, 1990, ch. 534, § 26; Laws, 1993, ch. 515, § 1; Laws, 1993, ch. 456, § 14; Laws, 1994, ch. 442, § 1; Laws, 2002, ch. 478, § 2, eff from and after Jan. 1, 2002.

Editor's Note — Laws of 1988, ch. 391, § 10, effective July 1, 1988, provides as follows:

"SECTION 10. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax or corporation franchise tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the income tax and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Provisions governing nonprofit prison industries corporations, see §§ 47-5-531 through 47-5-575.

Federal Aspects — Subchapter S of the Internal Revenue Code, see 26 USCS § 1361 et seq.

JUDICIAL DECISIONS

1. In general.

Under this section, which requires that the taxpayer seeking exemption have been organized and operated exclusively for educational or other purposes, a corporation organized to operate a highly profitable commercial television station on an interim basis was not exempt from taxation, notwithstanding the fact that it was required by an FCC order to disperse about one-half of its net profit to educational television and to disperse the rest "impliedly" to an educational institution which would develop a training program in journalism for minorities. Communications Imp. Inc. v. Mississippi State Tax Comm'n, 349 So. 2d 535 (Miss. 1977).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 234-308 (persons, property and organizations exempt from taxation).

CJS. 85 C.J.S., Taxation §§ 1989-1992.

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 27-7-30. Qualified business or industry exempt from taxation on income arising from certain projects developed under Mississippi Major Impact Act; requirements; reduction of amount of exemption.

(1)(a) As used in this subsection, "qualified business or industry" means any company and its affiliates, that has been certified by the Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxi).

(b) A qualified business or industry shall be exempt from the tax imposed by this chapter on income arising from a project as defined in Section 57-75-5(f)(xxi) only, and all other income shall be subject to the tax imposed by this chapter. The exemption does not apply to activities subject to Mississippi income tax prior to certification of the project.

(c) The income tax exemption authorized by this subsection shall not exceed twenty (20) years. A qualified business or industry must create at least one thousand five hundred (1,500) jobs prior to receiving the exemption authorized by this subsection and may elect the date upon which the twenty-year period will begin; however, the date may not be later than sixty (60) months after the date the qualified business or industry begins commercial production.

(d) In the event that the monthly average number of full-time jobs maintained by the qualified business or industry falls below one thousand five hundred (1,500) jobs, the tax exemption authorized by this subsection shall be reduced as follows:

(i) If the monthly average number of full-time jobs for a taxable year is more than one thousand four hundred (1,400) but less than one thousand five hundred (1,500), the amount of the exemption shall be reduced by one percent (1%) for the taxable year.

(ii) If the monthly average number of full-time jobs for a taxable year is more than one thousand one hundred (1,100) but less than one thousand four hundred one (1,401), then the amount of the exemption shall be reduced by twenty percent (20%) for the taxable year.

(iii) If the monthly average number of full-time jobs for the taxable year is more than eight hundred (800) but less than one thousand one hundred one (1,101), then the amount of the exemption shall be reduced by forty percent (40%) for the taxable year.

(iv) If the monthly average number of full-time jobs for the taxable year is more than five hundred (500) but less than eight hundred one (801), then the amount of the exemption shall be reduced by sixty percent (60%) for the taxable year.

(v) If the monthly average number of full-time jobs for the taxable year is more than two hundred (200) but less than five hundred one (501), then the amount of the exemption shall be reduced by eighty percent (80%) for the taxable year.

(vi) If the monthly average number of full-time jobs for the taxable year is two hundred (200) or less, the qualified business or industry shall not be eligible for the exemption for the taxable year.

(2)(a) As used in this subsection, "qualified business or industry" means any company and its affiliates that has been certified by the Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxviii).

(b) A qualified business or industry shall be exempt from the tax imposed by this chapter on income arising from a project as defined in Section 57-75-5(f)(xxviii) only, and all other income shall be subject to the tax imposed by this chapter. The exemption does not apply to activities subject to Mississippi income tax prior to certification of the project.

(c) The income tax exemption authorized by this subsection shall not exceed twenty (20) years unless the qualified business or industry creates and maintains for a period of three (3) years not less than one thousand (1,000) jobs, in which case the exemption period shall be extended by five (5) years.

(d) In the event that the annual average number of full-time jobs maintained by the qualified business or industry falls below the qualified business or industry's job commitment for two (2) consecutive years, the tax exemption authorized by this subsection shall be suspended until the first tax year during which the annual average number of full-time jobs maintained by the qualified business or industry reaches the qualified business or industry's job commitment.

(3)(a) As used in this subsection, "qualified business or industry" means any company and its affiliates that has been certified by the Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxix).

(b) A qualified business or industry shall be exempt from the tax imposed by this chapter on income arising from a project as defined in Section 57-75-5(f)(xxix) only, and all other income shall be subject to the tax imposed by this chapter. The exemption does not apply to activities subject to Mississippi income tax prior to certification of the project.

(c) The income tax exemption authorized by this subsection shall not exceed twenty-five (25) years. A qualified business or industry must create the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and such qualified business or industry and may elect the date upon which the twenty-five-year period will begin; however, the date may not be later than sixty (60) months after the date the qualified business or industry begins commercial production.

(d) In the event that the annual number of full-time jobs maintained by the qualified business or industry falls below the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and such qualified business or industry for two (2) consecutive years, the tax exemption authorized by this subsection shall be suspended until the first tax year during which the annual number of full-time jobs maintained by the qualified business or industry reaches the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and such qualified business or industry.

(e) The qualified business or industry shall be entitled to utilize a single sales apportionment factor in the calculation of its liability for income tax imposed by this chapter for any year for which it files a Mississippi income tax return. The qualified business or industry shall be entitled to continue to utilize such single sales apportionment factor notwithstanding a suspension of the income tax exemption pursuant to paragraph (d) of this subsection.

(4)(a) As used in this subsection, "qualified business or industry" means any company and that has been certified by the Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxx).

(b) A qualified business or industry shall be exempt from the tax imposed by this chapter on income arising from a project as defined in Section 57-75-5(f)(xxx) only, and all other income shall be subject to the tax imposed by this chapter. The exemption does not apply to activities subject to Mississippi income tax prior to certification of the project.

(c) The income tax exemption authorized by this subsection shall not exceed twenty (20) years. A qualified business or industry must create at least one thousand (1,000) jobs prior to receiving the exemption authorized by this subsection and may elect the date upon which the twenty-year period will begin; however, the date may not be later than sixty (60) months after the date the qualified business or industry begins commercial production and in no event later than December 31, 2022.

(5) A qualified business or industry that utilizes the exemption authorized by this section shall not be eligible for the credits authorized in Sections 57-73-21 through 57-73-29.

(6) The Mississippi Development Authority may promulgate rules and regulations necessary to administer the provisions of this section.

SOURCES: Laws, 2007, ch. 303, § 13; Laws, 2013, 1st Ex Sess, ch. 1, § 8; Laws, 2016, 1st Ex Sess, ch. 1, § 11, eff from and after passage (approved Feb. 8, 2016.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section, as amended by Laws of 2016, First Extraordinary Session, ch. 1. Former subsections (3) and (4) were renumbered as subsections (5) and (6) to conform to the section as amended. The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Note — Laws of 2007, ch. 303, § 14, effective March 2, 2007, provides:

"SECTION 14. Section 13 of this act shall be codified in Chapter 7, Title 27, Mississippi Code of 1972."

Amendment Notes — The 2016 1st Extraordinary Session added (3) and (4), which were redesignated as (5) and (6) by the Joint Legislative Committee.

Cross References — Mississippi Development Authority generally, see § 57-1-1 et seq.

Mississippi Major Economic Impact Authority generally, see § 57-75-1 et seq.

§ 27-7-31. Returns of income tax; individual returns.

(1) Every resident individual (whether single or married) and every nonresident individual (whether single or married) owning or selling property, earning income, or doing business in the State of Mississippi, having a gross income for the taxable year in excess of the exemptions allowed hereunder, plus the standard deduction, shall make a return, which shall contain an oath or be verified by a written declaration that it is made under the penalties of perjury, stating specifically the items of gross income and the deductions and exemptions allowed by this article. The commissioner may prescribe methods by which the taxpayer may make such oath or declaration other than by writing.

(2) Married individuals may elect to file either separate or joint returns. In any case where a husband and wife file a joint return, and one spouse is granted relief from liability under 26 USCS 6015, such spouse shall be granted comparable relief from liability for the tax imposed under this chapter.

(3) If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or estate of such taxpayer.

SOURCES: Codes, 1942, § 9220-16; Laws, 1934, ch. 120; Laws, 1946, ch. 204, § 1; Laws, 1952, ch. 402, § 15; Laws, 1966, ch. 630, § 1; Laws, 1994, ch. 309, § 2; Laws, 2006, ch. 449, § 1, eff from and after Jan. 1, 2006.

Cross References — Husband and wife filing joint return under this section being treated as one individual for purposes of casualty losses, see § 27-7-20.

Federal Aspects — Relief from joint and several liability on joint federal tax return, see 26 U.S.C.S. § 6015.

JUDICIAL DECISIONS

1. In general.

Bankruptcy debtor failed to show that the debtor's business was not profitable to excuse the debtor's failure to file income tax returns or rebut the presumption that the agency's assessment of the debtor's income tax liability was correct. Blalock v. Miss. Dep't of Rev. (In re Blalock), 537 B.R. 284 (Bankr. S.D. Miss. 2015).

Where a husband purchased mineral rights with joint funds of himself and his wife, taking legal title in his own name, a trust of one-half interest resulted in favor of wife, and the mineral rights and the income therefrom were the joint property of husband and wife, preventing any assessment of tax on such income against the husband alone. Stone v. Sample, 216 Miss. 287, 62 So. 2d 307 (1953), error overruled 216 Miss. 287, 63 So. 2d 555.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxes §§ 494-500 (returns).

CJS. 85 C.J.S., Taxation § 1977.

§ 27-7-33. Partnership returns; taxable year.

(1) Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this article, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income, if distributed, and the amount of the distributive share of each individual. The return shall contain an oath or be verified by a written declaration that it is made under the penalties of perjury.

(2) A partnership required to include the activity of a disregarded entity for federal income tax purposes shall do likewise for the purpose of computing income for this state.

(3) A partnership taxable year is required to be the same for Mississippi income tax purposes as determined for federal income tax purposes.

SOURCES: Codes, 1942, § 9220-17; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 16; Laws, 1987, ch. 438, § 3; Laws, 2008, ch. 433, § 2, eff from and after July 1, 2008.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 421 (partners), 486-491 (taxable year), 494-514 (returns, generally).

CJS. 85 C.J.S., Taxation § 1977.

§ 27-7-35. Fiduciary returns; taxable year; excess income carryover.

(1) Every fiduciary, except a receiver appointed by authority of law in possession of part only of the property of an individual, shall make a return under oath for any individual, trust or estate for whom he acts, and for every

trust or estate when the beneficiary is a nonresident, and shall state therein that he has sufficient knowledge of the affairs of the individual, trust or estate for which returns are made to enable him to make the return, and that, to the best of his knowledge and belief, the return is correct.

(2) Any fiduciary required to make returns shall be subject to all the provisions of this article which apply to individuals but shall not be required to file quarterly estimates of income tax.

(3) A fiduciary taxable year is required to be the same for Mississippi income tax purposes as determined for Federal income tax purposes.

(4) In the case of a fiduciary, each beneficiary that would otherwise be required to include more than twelve (12) months of income in a single taxable year may elect to include such excess of income in one (1) year or ratably over a period of four (4) taxable years.

SOURCES: Codes, 1942, § 9220-18; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 17; Laws, 1985, ch. 392; Laws, 1987, ch. 438, § 4, eff from and after January 1, 1987.

Cross References — Settlement of fiduciary's final account as dependent upon payment of income tax, see § 27-7-69.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 486-491 (taxable year), 494-514 (returns, generally).

§ 27-7-37. Corporate returns.

(1) Every corporation subject to taxation shall make a separate return, stating specifically the items of its gross income and the deductions and credits allowed by this article. The return shall be signed by either the president, vice president, secretary or treasurer.

(2)(a)(i) Two (2) or more members of an affiliated group of corporations, each taxable in Mississippi, may elect to file a combined income tax return. Corporations electing to file combined returns under this section shall determine the Mississippi net business income (or loss) on an individual corporate member basis as required in Section 27-7-23 and, if applicable, Sections 27-7-24, 27-7-24.1, 27-7-24.3, 27-7-24.5 and 27-7-24.7. The Mississippi net business income (or loss) so computed for each individual member shall be combined to determine the Mississippi net business income (or loss) of the combined group of affiliated corporations. To the amount so determined shall be added nonbusiness income of the combined members directly allocable to Mississippi to determine Mississippi taxable income.

(ii) The commissioner may require a corporation taxable under this article that is affiliated with one or more corporations that are not taxable under this article to file a combined return with the affiliated corporation or corporations if he establishes by preponderance of the evidence that the intercompany transactions of such taxable corporation have resulted in the shifting of taxable income from itself to another member or members of its affiliated group not subject to tax under this article. Also, the commissioner may require a group of affiliated corporations taxable under this article to file a combined return if he establishes by preponderance of the evidence that the intercompany transactions of such corporations have resulted in the shifting of taxable income between members of the included affiliated group. In the event that such a combined return is required, the net income or loss of each member of the group required to be combined, shall be combined pursuant to regulations prescribed by the commissioner to determine the total combined taxable income and the Mississippi taxable income of the group. The tax imposed by this article shall be computed and assessed upon the Mississippi taxable income of the combined group which shall be treated as the taxpayer.

(iii) The commissioner shall not require the filing of a combined return pursuant to the authority granted under subparagraph (ii) of this paragraph until regulations shall have been enacted specifying the criteria and circumstances that form the basis for meeting the preponderance of the evidence standard required to support a conclusion that intercompany transactions of such taxable corporation have resulted in the improper shifting of taxable income from a taxpayer to another member or members of its affiliated group not subject to tax under this article, or that the intercompany transactions of such corporations have resulted in the improper shifting of taxable income between members of the included affiliated group.

(iv) The commissioner shall be prohibited from assessing any penalties related to a deficiency arising from the exercise of the authority granted under subparagraph (ii) of this paragraph unless the commissioner shall establish by preponderance of the evidence that the taxpayer's filing method was without reasonable basis or the intercompany transactions at issue lacked any material nontax business purpose.

(b) The privilege to file combined returns shall be limited to members of an affiliated group of corporations which are subject to taxation under the provisions of this article. The privilege of making a combined return may be exercised only if all corporations subject to taxation under this article which were members of the affiliated group at any time during the taxable year consent to a combined return prior to the last day prescribed by law for the filing of such return. The making of a combined return shall be considered as such consent. In the case of a taxable corporation which is a member of the affiliated group for a fractional part of the year, the combined return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(c) The commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a combined return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(d) As used in this article, the term "affiliated group" means one or more corporations connected through stock ownership with a common parent corporation where at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of each of the member corporations, except the common parent corporation, is owned directly by one or more of the other member corporations; and the common parent corporation owns directly stock possessing at least eighty percent (80%) of the voting power of all classes of stock and at least eighty percent (80%) of each class of the nonvoting stock of at least one (1) of the other member corporations. As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) If a corporation elects or is required to file returns on a combined basis, all subsequent returns shall be made upon the same basis unless permission to change the basis is granted by the commissioner, or unless the commissioner requires a change in the basis.

(3) If any foreign corporation has no office or place of business in this state but has an agent in this state, the returns shall be made by the agent.

(4) In the case of a receiver, trustee in bankruptcy, or assignees operating the property or business of a corporation, such receiver, trustee or assignee shall make returns for such corporation in the same manner and form as corporations are required to make returns; and any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation of whose business or property they have custody or control.

(5) A corporation required to include the activity of a disregarded entity for federal income tax purposes shall do likewise for the purpose of computing income for this state.

(6) An out-of-state business as defined in Section 27-113-5 shall be exempt from the requirements of this section to the extent provided for in Section 27-113-7.

SOURCES: Codes, 1942, § 9220-19; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 18; Laws, 1978, ch. 410, § 2; Laws, 1981, ch. 406, § 1; Laws, 1996, ch. 441, § 70; Laws, 2004, ch. 371, § 1; Laws, 2008, ch. 433, § 3; Laws, 2014, ch. 476, § 3; Laws, 2015, ch. 420, § 7, eff from and after passage (approved Mar. 29, 2015.)

Editor's Note — Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides: "SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Filing of corporate income tax returns by S corporations, see § 27-8-19.

"Affiliated group," as defined in this section, referenced in definition of "holding corporation" for corporation franchise tax purposes, see § 27-13-1.

Combined returns of income tax, franchise tax, and annual report of foreign and domestic corporations, see § 27-13-17.

JUDICIAL DECISIONS

1. In general.

Chancery court did not err in overturning the tax assessment against a corporation because the corporation properly applied gaming license credits to offset its income tax liability of the combined return with its affiliated entities; the limitation the Mississippi Department of Revenue claimed was on the credit had to be determined in reference to the tax liability of the four licensees in the affiliated group, which were allowed to use the credit to offset their income tax liability. Miss. Dep't of Revenue v. Isle of Capri Casinos, Inc., 131 So. 3d 1192 (Miss. 2014).

RESEARCH REFERENCES

ALR. State corporate income taxation of foreign dividends. 17 A.L.R.6th 623.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 170 et seq. (domestic corporations), 190 et seq. (foreign corporations).

CJS. 85 C.J.S., Taxation § 1977.

§ 27-7-39. Information at source.

(1) Every individual, partnership, corporation, joint-stock company or association or insurance company, being a resident or having a place of business in this state, members of partnerships or employees in whatever capacity acting, including lessees and mortgagors of real and personal property, fiduciaries, employers and all officers and employees of the state, or any political subdivision of the state, having the control, receipt, custody, disposal or payment of salaries, wages or commissions in excess of the exemption of the recipient, and of interest, rent, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profits and income, paid or payable during any year to any taxpayer, shall make complete returns thereof under oath to the commissioner, under such regulations and conditions, in such form and manner and to such extent

as may be prescribed by the commissioner, with the approval of the Governor; and, unless such payments are so reported, the commissioner may disallow such payments as deductions for credits in computing the tax of the payer. An exempt organization not subject to tax under the provisions of this article which fails to file the returns required by this section shall be notified of its delinquency and if such returns are not filed and the delinquency persists, the exemption from taxation enjoyed by the organization shall be forfeited.

(2) The commissioner may require material advisors and taxpayers required to notify the Internal Revenue Service of reportable transactions to notify the State Tax Commission of such transactions. The commissioner may require material advisors required to keep lists of reportable transactions for Internal Revenue Service purposes to do likewise for State Tax Commission purposes. The commissioner may specify the manner and method by which such transactions and lists must be reported as well as the scope of the information maintained and reported.

SOURCES: Codes, 1942, § 9220-20; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 19; Laws, 1958, ch. 554, § 5; Laws, 2008, ch. 433, § 4, eff from and after July 1, 2008.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

JUDICIAL DECISIONS

1. In general.

Tax on income from testamentary trust distributed annually to a large number of beneficiaries, only a few of whom resided in the state, was taxable to the beneficiaries and not to the trustees. State ex rel. Rice v. Stirling, 199 Miss. 555, 24 So. 2d 776 (1946).

§ 27-7-41. Time and place for filing returns.

Except as otherwise provided in this section, returns of individuals, estates, trusts and partnerships shall be filed on or before the 15th day of the fourth month following the close of the fiscal year; or if the return is filed on the basis of a calendar year, it shall be filed on or before April 15 of each year. Except as otherwise provided in this section, returns of corporations shall be filed on or before the 15th day of the third month following the close of the fiscal year; or if the return is filed on the basis of a calendar year, it shall be filed on or before March 15 of each year. For tax years beginning after December 31, 2015, the date for filing a return under this section shall be the same as the date provided for filing the corresponding federal return.

If the date for filing any report, claim, tax return, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if performed on the next business day.

All returns shall be made to the commissioner.

SOURCES: Codes, 1942, § 9220-21; Laws, 1934, ch. 120; Laws, 1946, ch. 212, § 1; Laws, 1952, ch. 402, § 20; Laws, 1954, ch. 391; Laws, 1966, ch. 631, § 1; Laws, 1979, ch. 427, § 8; Laws, 2016, ch. 338, § 1, eff from and after Jan. 1, 2016.

Amendment Notes — The 2016 amendment, in the first paragraph, added the exception at the beginning of the first and second sentences, and added the last sentence.

Cross References — Filing of corporate income tax returns by S corporations, see § 27-8-19.

JUDICIAL DECISIONS

1. Bankruptcy.

Summary judgment was granted to the Mississippi Department of Revenue in a Chapter 7 bankruptcy case because a debtor was unable to discharge income taxes from 2002 and 2005; the debtor failed to file an income tax return in 2002, and the 2005 return was not timely filed under Miss. Code Ann. §§ 27-7-41, 27-7-50. Weiland v. Miss. Dep't of Revenue (In re Weiland), 465 B.R. 108 (Bankr. N.D. Miss. 2011).

RESEARCH REFERENCES

ALR. What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause." 29 A.L.R.4th 413.

§ 27-7-43. Returns for period less than twelve months.

If any taxpayer, with the approval of the commissioner, changes his accounting period from a fiscal year to a calendar year, or from a calendar year to a fiscal year, a return shall be made for the intervening period, and the tax due upon that return shall be determined on an annual basis.

SOURCES: Codes, 1942, § 9220-22; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 21, eff from and after January 1, 1952.

§ 27-7-45. Time for payment of tax or child support; effect of state officer's or employee's failure to pay; payment by check; manner of payment by corporation subject to LIFO recapture.

(1) The tax levied by this article shall be paid when the return is due except as hereinafter provided.

(2) If any officer or employee of the State of Mississippi, or any political subdivision thereof, does not pay his state income tax on or before August 15 after such income tax becomes due and payable, or is in arrears in child support payments for thirty (30) days after such payments become due and payable, his wages, salary or other compensation shall be withheld and paid to the Department of Revenue or the Department of Human Services, as the case may be, in satisfaction of such income tax, interest, and penalty, if any, and any child support arrearage until paid in full. This provision shall apply to any installments of income tax or child support due, after the first installment, to

require payment of the entire balance of child support tax due, plus interest and penalty, if any, before an officer or employee of the State of Mississippi, or any political subdivision thereof, is eligible to draw any salary or other emoluments of office. The Commissioner of Revenue is required to furnish the State Fiscal Officer, chancery clerk, city clerk or other appropriate fiscal officer of a political subdivision, as the case may be, with notice that income taxes have not been paid. The Department of Human Services is required to furnish the officer's or the employee's employer, or other appropriate officer of the State of Mississippi or its political subdivision, as the case may be, with notice that child support payments have not been made. This notice shall serve as a lien or attachment upon any salary or compensation due any employee or officer, disregard of this notice creating personal liability against such officer for the full amount of the income tax due, plus interest and penalty. The Department of Revenue may, in its discretion, waive the provisions of this subsection on behalf of any public officer or employee in the event of an extended personal illness, an extended illness in his immediate family or other emergency. Regardless of the amount designated in the Department of Human Service's notice for withholding and regardless of other fees imposed or amounts withheld pursuant to this section, the payor shall not deduct from the income of the officer or employee in excess of the amounts allowed under Section 303(b) of the Consumer Credit Protection Act, being 15 USCS 1673, as amended.

(3) The tax or child support payment may be paid with uncertified check during such time and under such regulations as the commissioner or the Department of Human Services shall prescribe, but if the check so received is not paid by the bank on which it is drawn, the officer or employee for whom such check is tendered shall remain liable for the payment of the tax, child support payment and for all penalties, the same as if such check had not been tendered.

(4) If a corporation is subject to LIFO recapture pursuant to Section 1363(d) of the Code, then:

(a) Any increase in the tax imposed by Section 27-7-5 by reason of the inclusion of the LIFO recapture amount in its income shall be payable in four (4) equal installments;

(b) The first installment shall be paid on or before the due date (determined without regard to extensions) for filing the return for the first taxable year for which the corporation was subject to the LIFO recapture;

(c) The three (3) succeeding installments shall be paid on or before the due date (determined without regard to extensions) for filing the corporation's return for the three (3) succeeding taxable years; and

(d) For purposes of computing interest on underpayments, the last three (3) installments shall not be considered underpayments until after the payment due date specified above.

(5) For purposes of this section, a political subdivision includes, but is not limited to, a county or separate school district, institution of higher learning, state college or university, or state community college.

(6) The tax levied by this article and paid by a business enterprise located in a redevelopment project area under Sections 57-91-1 through 57-91-11 shall

be deposited into the Redevelopment Project Incentive Fund created in Section 57-91-9.

SOURCES: Codes, 1942, § 9220-23; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 22; Laws, 1958, ch. 544, § 6; Laws, 1966, ch. 631, § 2; Laws, 1993, ch. 456, § 15; Laws, 1993, ch. 563, § 2; Laws, 1997, ch. 588, § 151; Laws, 2005, ch. 468, § 7; Laws, 2009, ch. 492, § 42, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence of subsection (2) by substituting "Department of Revenue" for "State Tax Commission." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Payment of estimated tax, see § 27-7-329.

JUDICIAL DECISIONS

1. In general.

Due process does not require that the courts, rather than an administrative officer, determine the facts upon which the imposition of a penalty depends. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

The imposition of interest and penalties by the tax commissioner is subject to review under the provisions of Code 1942,

§ 9220-30 and § 9220-31. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

A penalty may be assessed without having first issued a warrant for the collection of the tax. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

Code 1942, § 9220-24 was unconstitutional both as a denial of equal protection and as an improper delegation of legislative power, in conferring discretionary power to impose a penalty, within stated limits, without prescribing any standard for fixing the amount or defining the conditions which will warrant its imposition; and was not relieved of such infirmity by the fact that the commission had been impartial in fixing the amount of the penalties according to a classification of his own making. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

ATTORNEY GENERAL OPINIONS

The payment of per diem is tantamount to the payment of salary or other emolument of office and subject to provisions of Section 27-7-45. Taylor, October 4, 1996, A.G. Op. #96-0672.

§ 27-7-47. Free online income tax preparation and filing services for certain taxpayers.

The Commissioner of Revenue may establish a program to offer free online income tax preparation and filing services to Mississippi taxpayers similar to the free filing program offered by the United States Internal Revenue Service. To implement this program, the Commissioner of Revenue may enter into an agreement with providers of electronic tax preparation and filing services to offer the services at no cost to the State of Mississippi and free of charge to Mississippi taxpayers who are eligible to utilize the free filing program offered by the Internal Revenue Service. The Department of Revenue may place links to the free file services on its website.

SOURCES: Laws, 2012, ch. 432, § 1, eff from and after July 1, 2012.

Editor's Note — A former § 27-7-47 [Codes, 1942, § 9220-24; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 23; Laws, 1960, ch. 458; Laws, 1966, ch. 631, § 3; Laws, 1968, ch. 580, § 28; Repealed by Laws, 1975, ch. 429, eff from and after January 1, 1976] pertained to the payment of an estimated tax by installments.

Cross References — State agencies and public officials providing information about the agency or office to the public on a website are required to regularly review and update that information, see § 25-1-117.

§ 27-7-49. Examination of returns.

(1) Returns shall be examined by the commissioner or his or her duly authorized agents within three (3) years from the due date or the date the return was filed, whichever is later, and no determination of a tax overpayment or deficiency shall be made by the commissioner after the expiration of the three-year period, except as provided in this section and as provided in Section 27-7-307.

(2) When an examination of a return made under this article has been commenced, and the taxpayer notified of the examination, either by certified

mail or personal delivery by an agent of the commissioner, within the three-year examination period provided in subsection (1) of this section, the determination of the correct tax liability may be made by the commissioner after the expiration of the three-year examination period, provided that the determination shall be made within one (1) year after the expiration of the three-year examination period; however, this limitation and the limitation contained in subsection (1) of this section shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine and assess at any time the estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this article, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable time and location. Refusal or delay by the taxpayer to provide documentation for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

(4) A taxpayer may apply to the commissioner for revision of any return filed under this article at any time within three (3) years from the due date, or if an extension of time to file was granted, three (3) years from the date the return was filed. If the return is not filed by the time authorized by the extension, then the three (3) years begin to run from the final day of the extension period.

(5) Where the reported taxable income of a taxpayer has been increased or decreased by the Internal Revenue Service, the three-year examination period

provided in subsection (1) of this section shall not be applicable, insofar as the Mississippi income tax liability is affected by the specific changes made by said Internal Revenue Service. However, no additional assessment or no refund shall be made under the provisions of this article after three (3) years from the date the Internal Revenue Service disposes of the tax liability in question.

(6) Where the reportable taxable income of a taxpayer has been decreased by the carryback of a net casualty loss deduction under Section 27-7-20 or the carryback of a net operating loss deduction under Section 27-7-17, the three-year examination period provided under subsection (1) of this section shall not be applicable insofar as the Mississippi income tax liability is affected by the carryback of the net casualty loss deduction or the carryback of the net operating loss deduction.

SOURCES: Codes, 1942, § 9220-25; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 24; Laws, 1958, ch. 554, § 7; Laws, 1966, ch. 632, § 1; Laws, 1971, ch. 512, § 1; Laws, 1986, ch. 393, § 5; Laws, 1993, ch. 563, § 3; Laws, 2007, ch. 466, § 2; Laws, 2010, ch. 386, § 2; Laws, 2013, ch. 470, § 1; Laws, 2017, ch. 335, § 1, eff from and after Jan. 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference near the end of subsection (2) by substituting “subsection (1) of this section” for “subsection (1) of this subsection.” The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor’s Note — Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides:

“SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective.

Amendment Notes — The 2017 amendment, effective January 1, 2017, inserted “or her” near the beginning of (1); and added (4) and redesignated the remaining subsections accordingly.

Cross References — Commissioner’s powers or connection with examination of returns, see § 27-7-79.

Provisions relative to refunds to taxpayers, see §§ 27-7-313 and 27-7-315.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 27-7-49 (Rev. 2010) did not apply to the taxpayers' declaratory judgment action where the taxpayers acknowledged that they failed to file any tax returns until after the assessment under Miss. Code Ann. § 27-7-53 (Rev. 2010) had taken place, after they had been so notified, and after collection activities had commenced. McCrory v. Miss. Dep't of Revenue, 152 So. 3d 1204 (Miss. Ct. App. 2014).

Once notice of impending reassessment has been filed, three-year statutory period cannot begin to run against commission at any subsequent time in process. Mississippi State Tax Comm'n v. 3300 Corp., 515 So. 2d 912 (Miss. 1987).

Destruction by the tax commission of the original state income tax returns does not preclude a deficiency assessment by reason of a change in net income made by the federal Internal Revenue Service. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

No exception to the rule that administrative remedies must be exhausted before resorting to the courts for relief against a deficiency assessment of state income tax based on a change in net income made by the the federal Internal Revenue Service, may be based on the destruction by the tax commissioner of the original return. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

Where an additional assessment was made before the lapse of three years from the date of the return of the income tax and the taxpayer made an effort to set aside and defeat the assessment and asked for and obtained a hearing before the commission, and where the commission sustained and approved the assessment, the statute of limitations had no application. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

RESEARCH REFERENCES

ALR. Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

§ 27-7-50. Extension of time to file return.

The commissioner may grant a reasonable extension of time beyond the statutory due date within which to file any return required by this chapter when it is shown to the satisfaction of the commissioner that good cause for such extension exists. The commissioner may, in his discretion, automatically recognize extensions of time authorized and granted by the Internal Revenue Service for the filing of tax returns.

SOURCES: Laws, 1979, ch. 427, § 4; Laws, 1982, ch 489, § 3; Laws, 2005, 5th Ex Sess, ch. 10, § 1, eff from and after passage (approved Oct. 6, 2005.)

Cross References — Provisions relative to refunds to taxpayers, see § 27-7-313.

JUDICIAL DECISIONS

1. Bankruptcy.

Summary judgment was granted to the Mississippi Department of Revenue in a Chapter 7 bankruptcy case because a debtor was unable to discharge income taxes from 2002 and 2005; the debtor failed to file an income tax return in 2002, and the 2005 return was not timely filed under Miss. Code Ann. §§ 27-7-41, 27-7-50. Weiland v. Miss. Dep't of Revenue (In re Weiland), 465 B.R. 108 (Bankr. N.D. Miss. 2011).

§ 27-7-51. Additional taxes or refunds.

(1) If, upon examination of a return made under the provisions of this article, it appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. Any overpayment of tax so determined shall be credited or refunded to the taxpayer. If the correct amount of tax is greater than that shown in the return of the taxpayer, the commissioner shall make his assessment of additional tax due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date the commissioner mailed or hand delivered the notice in which to pay the additional tax due, including penalty and interest as hereinafter provided, and if the sum is not paid within the period of sixty (60) days, the commissioner shall proceed to collect it under the provisions of Sections 27-7-55 through 27-7-67, provided that within the period of sixty (60) days the taxpayer may appeal to the Board of Review as provided by law.

(2) In the case of an overpayment of tax, interest shall be computed under the provisions of Section 27-7-315. In the case of an underpayment of tax, interest at the rate of one percent (1%) per month, except as otherwise provided in subsection (6) of this section, from the due date of the return may be added or assessed in addition to the additional tax due as hereinabove provided in subsection (1) of this section.

(3) In case of failure to pay any additional taxes as assessed under this section, there may be added to the additional amount assessed a penalty of one-half of one percent (½ of 1%) of the amount of the additional tax if the failure is for not more than one (1) month, with an additional one-half of one percent (½ of 1%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

(4) Where the reported net income of a taxpayer is increased by the Internal Revenue Service, and the taxpayer, without action by the commissioner, amends a return filed under this article on the basis of a change in taxable income made by the Internal Revenue Service, and pays the additional tax due within thirty (30) days after agreeing to the federal change (and has received statement of the federal changes to which agreement has been made or payment thereof), the commissioner may add interest to the additional tax at the rate of one percent (1%) per month, except as otherwise provided in subsection (6) of this section, from due date of the original return. If the additional tax, based on changes in taxable income by the Internal Revenue Service, is assessed by the commissioner under subsection (1) of this section, in

addition to the interest there may be added a penalty of one-half of one percent (½ of 1%) of the additional tax due if the failure is for not more than one (1) month, with an additional one-half of one percent (½ of 1%) for each additional month or fraction thereof during which the failure to pay continues, not to exceed twenty-five percent (25%) in the aggregate, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(5) In the case of a taxpayer who appeals the decision of the Board of Tax Appeals and the tax assessment or a part of the assessment is upheld by the chancery court and/or the Supreme Court, the assessment may bear interest at the rate of one percent (1%) per month, except as otherwise provided in subsection (6) of this section, from the due date until paid.

(6) For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(a) Nine-tenths of one percent (⁹⁄₁₀ of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(b) Eight-tenths of one percent (⁸⁄₁₀ of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(c) Seven-tenths of one percent (⁷⁄₁₀ of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(d) Six-tenths of one percent (⁶⁄₁₀ of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(e) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

(7)(a) Nothing in this section shall be construed as authorizing a refund of taxes for claims pursuant to the United States Supreme Court decision of *Davis v. Michigan Department of Treasury,* 109 S.Ct. 1500 (1989). These taxes were not incorrectly and/or erroneously collected as contemplated by this chapter.

(b) In the event a court of final jurisdiction determines the above provision to be void for any reason, it is hereby declared the intent of the Legislature that affected taxpayers shall be allowed a credit against future income tax liability as opposed to a tax refund.

SOURCES: Codes, 1942, § 9220-25.1; Laws, 1971, ch. 512, § 2; Laws, 1978, ch. 341, § 1; Laws, 1979, ch. 427, § 5; Laws, 1984, ch. 447, § 2; Laws, 1988, ch. 391, § 5; Laws, 1990, ch. 523, § 6; Laws, 1991, ch. 524, § 7; Laws, 2002, ch. 414, § 1; Laws, 2005, ch. 414, § 1; Laws, 2005, ch. 499, § 12; Laws, 2009, ch. 492, § 43; Laws, 2014, ch. 476, § 4, eff from and after January 1 2015.

Joint Legislative Committee Note — Section 1 of ch. 414, Laws of 2005, effective from and after July 1, 2005 (approved March 21, 2005), amended this section. Section 12 of ch. 499, Laws of 2005, effective from and after July 1, 2005 (approved April 21, 2005), also amended this section. As set out above, this section reflects the language of Section 12 of ch. 499, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1991, ch. 524, § 18, effective from and after January 1, 1991, provides as follows:

"SECTION 18. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax or franchise tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax or franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Davis v. Michigan Department of Treasury, 489 U.S. 803; 109 S. Ct. 1500; 103 L. Ed. 2d 891, referenced in this section, was decided March 28, 1989.

Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of

Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Penalty for underpayment of taxes attributable to fraud, see § 27-7-105.

Tax refunds, see §§ 27-7-313, 27-7-315.

JUDICIAL DECISIONS

1. Notice sufficient.

Because the Mississippi Department of Revenue (MDOR) provided the taxpayer notice of the tax assessment by regular mail, there was no abuse of discretion in the chancery court's determination that the MDOR provided the taxpayer with sufficient notice; subsection (1) specifically applied to and governed the notice required for the taxpayer's assessment. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

§ 27-7-53. Delinquent taxes; failure to file return.

(1)(a) Except as otherwise provided in this section, if a return is timely filed by the taxpayer but the tax due is not paid, the commissioner shall make his assessment of tax due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date the commissioner mailed or hand delivered the notice in which to pay the tax due, including penalty and interest as hereinafter provided, and if the sum is not paid within the period of sixty (60) days, the commissioner shall proceed to collect it under the provisions of Sections 27-7-55 through 27-7-67 of this article; provided that within the period of sixty (60) days the taxpayer may appeal to the Board of Review as provided by law.

(b)(i) If an individual return is timely filed by the taxpayer and the amount of tax liability (determined without regard to interest, penalties, additions to the tax and additional amounts) of the taxpayer exceeds Seventy-five Dollars ($75.00) but does not exceed Three Thousand Dollars ($3,000.00), the taxpayer may request to pay the tax liability through an installment agreement.

(ii) If an individual return is timely filed by the taxpayer and the amount of tax liability (determined without regard to interest, penalties, additions to the tax and additional amounts) of the taxpayer exceeds Three Thousand Dollars ($3,000.00) and the taxpayer has entered into an installment agreement with the Internal Revenue Service to pay federal income taxes on income earned during the same taxable year during which the state income tax liability was incurred, the taxpayer may request to pay the tax liability through an installment agreement.

(iii) The taxpayer must file such a request with the return and must provide all information required by the commissioner.

(iv) If the commissioner determines a taxpayer is financially unable to pay the tax liability, the commissioner may enter into an agreement to accept payment of the tax liability in installments if:

1. The taxpayer (and the taxpayer's spouse if the tax liability relates to a joint return), during any of the preceding five (5) years, has not:

a. Failed to file any return required by this chapter,

b. Failed to pay any tax required by this chapter, or

c. Entered into an installment agreement under this paragraph (b);

2. The agreement requires full payment of the tax liability in equal installments within twelve (12) months from the date the return was filed if the tax liability falls within the provisions of subparagraph (i) of this paragraph, or within sixty (60) months from the date the return was filed if the tax liability falls within the provisions of subparagraph (ii) of this paragraph; and

3. The taxpayer agrees to comply with the terms of the agreement.

(v) Payments made through an installment agreement shall be subject to the interest provisions of subsection (3) of this section.

(vi) The commissioner may terminate an installment agreement entered into under this paragraph (b) if he determines the taxpayer provided inaccurate or incomplete information before the agreement was entered into or he believes the collection of the tax to which the agreement relates is in jeopardy.

(vii) The commissioner may modify or terminate an installment agreement entered into under this paragraph (b) if the taxpayer fails to:

1. Pay any installment due under the agreement;

2. Pay any other tax liability due under this chapter when the liability is due; or

3. Provide a statement of financial condition required by the commissioner.

(2) If no return is made by a taxpayer required by this chapter to make a return, the commissioner shall determine the taxpayer's liability from the best information available, which determination shall be prima facie correct for the purpose of this article, and the commissioner shall forthwith make an assessment of the tax so determined to be due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date the commissioner mailed or hand delivered the notice in which to pay the tax due, including penalty and interest as hereinafter provided, and if the sum is not paid within the period of sixty (60) days, the commissioner shall proceed to collect it under the provisions of Sections 27-7-55 through 27-7-67 of this article; provided that within the period of sixty (60) days the taxpayer may appeal to the Board of Review as provided by law.

(3)(a) Interest at the rate of one percent (1%) per month, except as otherwise provided in this subsection, from the due date of the return may be added or assessed in addition to the tax due as provided in subsections (1) and (2) of this section.

(b) For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(i) Nine-tenths of one percent (9/10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(ii) Eight-tenths of one percent (8/10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(iii) Seven-tenths of one percent (7/10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(iv) Six-tenths of one percent (6/10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(v) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

(4) In case of failure to file a return as required by this chapter, there may be added to the amount required to be shown as tax on the return a penalty of five percent (5%) of the total amount of the deficiency or delinquency of the tax if the failure is for not more than one (1) month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate. The failure to file a return penalty shall not be less than One Hundred Dollars ($100.00).

(5) In case of failure to pay the amount shown as tax on any return specified in subsections (1) and (2) of this section on or before the date prescribed for payment of the tax, determined with regard to any extension of time for payment or installment agreement, or both, there may be added to the amount shown as tax on the return one-half of one percent (½ of 1%) of the total amount of the deficiency or delinquency of the tax if the failure is for not more than one (1) month, with an additional one-half of one percent (½ of 1%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

SOURCES: Codes, 1942, § 9220-26; Laws, 1934, ch. 120; Laws, 1938, ch. 116; Laws, 1942, ch. 134; Laws, 1944, ch. 123, § 1; Laws, 1948, ch. 438, § 1; Laws, 1952, ch. 402, § 25; Laws, 1958, ch. 554, § 8; Laws, 1966, ch. 632, § 2; Laws, 1971, ch. 512, § 3; Laws, 1978, ch. 341, § 2; Laws, 1979, ch. 427, § 6; Laws, 1986, ch. 393, § 7; Laws, 1991, ch. 524, § 8; Laws, 1992, ch. 407, § 2; Laws, 1995, ch. 346, § 3; Laws, 2002, ch. 414, § 2; Laws, 2005, ch. 414, § 2; Laws, 2005, ch. 499, § 13; Laws, 2009, ch. 492, § 44; Laws, 2010, ch. 387, § 1; Laws, 2014, ch. 476, § 5, eff from and after January 1, 2015.

Joint Legislative Committee Note — Section 2 of ch. 414, Laws of 2005, effective from and after July 1, 2005 (approved March 21, 2005), amended this section. Section 13 of ch. 499, Laws of 2005, effective from and after July 1, 2005 (approved April 21, 2005), also amended this section. As set out above, this section reflects the language of Section 13 of ch. 499, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1991, ch. 524, § 18, effective from and after January 1, 1991, provides as follows:

"SECTION 18. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax or franchise tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax or franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Penalty for underpayment of taxes attributable to fraud, see § 27-7-105.

Action to recover tax, penalty and interest, see § 27-35-5.

JUDICIAL DECISIONS

1. In general.

Because the evidence in the record supported the chancery court's determination that the Mississippi Department of Revenue (MDOR) complied with the statute's notice requirements for assessments on unfiled tax returns, the taxpayer did not lack proper notice of the assessments; the MDOR provided a copy of electronic records to establish that it issued one tax assessment by regular mail, and it provided proof that it issued another assessment by regular mail. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

There was no abuse of discretion in the chancery court's finding that the Mississippi Department of Revenue (MDOR) provided sufficient notice to the taxpayer of his tax assessments because the MDOR presented sufficient proof of the taxpayer's receipt of the tax assessments; the MDOR presented the chancellor with a copy of electronically recorded information documenting the taxpayer's receipt of the certified-mail notices. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

There was no abuse of discretion in the chancery court's finding that the Mississippi Department of Revenue (MDOR) provided sufficient notice to the taxpayer of his tax assessments because the MDOR exceeded the notice requirements of the statue when it sent the taxpayer notice of his assessments by certified mail; the statute only required the MDOR to send notice of the assessment to the taxpayer by mail or by personal delivery. Williams v. Morgan, 201 So. 3d 1073 (Miss. Ct. App. 2016).

Bankruptcy debtor failed to show that the debtor's business was not profitable to excuse the debtor's failure to file income tax returns or rebut the presumption that the agency's assessment of the debtor's income tax liability was correct. Blalock v. Miss. Dep't of Rev. (In re Blalock), 537 B.R. 284 (Bankr. S.D. Miss. 2015).

Chancellor did not err in granting the Mississippi Department of Revenue summary judgment on the taxpayers' action for a declaratory judgment and injunctive relief where the taxpayers acknowledged that they failed to file any tax returns until after the assessment under Miss. Code Ann. § 27-7-53 (Rev. 2010) had taken place, after they had been so notified, and after collection activities had commenced, and thus, Miss. Code Ann. § 27-7-49 (Rev. 2010) did not apply. McCrory v. Miss. Dep't of Revenue, 152 So. 3d 1204 (Miss. Ct. App. 2014).

Where plaintiff debtor sought a discharge of her prior state income tax obligations, her failure to file timely tax returns prior to the State tax commission's determination of her income tax liability for the years in issue, such liability was nondischargeable, because the debtor had not filed a return, and her liability had been determined under Miss. Code Ann. § 27-7-53(2). McCoy v. Miss. State Tax Comm'n (In re McCoy), — Bankr. —, 2009 Bankr. LEXIS 2542 (Bankr. S.D. Miss. Aug. 31, 2009), affirmed by, appeal dismissed by 2011 U.S. Dist. LEXIS 55463 (S.D. Miss. Feb. 8, 2011).

State offered proof that an assessment of tax liability was mailed to defendant, and according to Miss. Code Ann. § 27-7-53, that assessment constituted written notice and demand for payment; therefore, the trial court properly denied defendant's motion for a directed verdict, on the ground that he did not receive proper notice, in defendant's trial for failure to file a tax return and attempting to evade payment of personal income tax. Salman v. State, — So. 2d —, 2004 Miss. App. LEXIS 72 (Miss. Ct. App. Feb. 3, 2004), writ of certiorari denied by 882 So. 2d 234, 2004 Miss. LEXIS 993 (Miss. Aug. 5, 2004).

The acts of the chief of the income tax division and other representatives of state tax commission were the acts of the chairman of the commission, in whom was vested the administration of the income tax law and an additional assessment by them was an assessment by the chairman. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

Where manufacturer's formula whose use was urged by foreign dredging corporation, engaged in projects in Mississippi and other states, in proportioning income and loss as between Mississippi and other states was rejected by the commission, which contended that a specific accounting could be made, the burden was on the corporation to show that its extra-territorial values were being taxed, and it cannot complain unless it can show that the commission's method was arbitrary and unreasonable. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

Contention of foreign dredging corporation, which had engaged in projects in Mississippi during the tax period, that its business was a unitary operation rendering it impossible to divide its business into separate units for state income tax purposes was without merit where auditors of the tax commission had no insurmountable difficulty in ascertaining from the company's books its receipts and expenses with respect to each project, and the company apparently had no difficulty in specifically accounting to the state of Louisiana for its income earned in that state. McWilliams Dredging Co. v. McKeigney, 227 Miss. 730, 86 So. 2d 672 (1956), appeal dismissed, 352 U.S. 807, 77 S. Ct. 57, 1 L. Ed. 2d 38 (1956).

In a proceeding to impose additional income tax assessment against husband, who had filed joint tax returns with his wife in respect to income on certain mineral lands, on the theory that the returns for taxes should have shown income to have belonged to the husband alone instead of joint income of husband and wife, the fact that the collection of tax against the wife would have been difficult, could not be a factor in determining the rights of the parties to the property. Stone v. Sample, 216 Miss. 287, 62 So. 2d 307 (1953), error overruled 216 Miss. 287, 63 So. 2d 555.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 709 (form and sufficiency of particular notices), 712 et seq. (obligation to pay and manner of payment).

CJS. 85 C.J.S., Taxation § 1353.

§ 27-7-55. Collection of tax; enrolling judgment.

If any taxpayer, liable for the payment of income taxes, penalties or interest, fails or refuses to pay them after receiving the notice and demands as provided in Sections 27-7-49, 27-7-51 and 27-7-53, and if the taxpayer has not filed a timely appeal to the board of review as provided by law, the commissioner may file a notice of tax lien for the income taxes, penalties and interest with the circuit clerk of the county in which the taxpayer resides or owns property, which shall be enrolled on the judgment roll. Immediately upon receipt of the notice of tax lien for income taxes, penalties and interest, the circuit clerk shall enter upon the judgment roll, in the appropriate columns, the name of the taxpayer as judgment debtor, the name of the commissioner or Department of Revenue as judgment creditor, the amount of the taxes, penalties and interest, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon all property and rights to property belonging to the taxpayer, both real and personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied; however, the judgment shall not be a lien upon the property of the taxpayer for a longer period than seven (7) years from the date of the filing of the notice of tax lien for income taxes, penalties and interest unless an action is brought on the lien before the expiration of such time or unless the commissioner refiles the notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the taxpayer for a period of seven (7) years from the date of refiling such notice of tax lien unless an action is brought on the lien before the expiration of such time or unless the commissioner refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times that the commissioner may refile notices of tax liens. The judgment shall serve as authority for the issuance of writs of execution, writs of attachment, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of income taxes from such judgments in lieu of the issuance of any remedial writ by the circuit clerk.

Upon failure to pay the taxes imposed under this article by any taxpayer who has executed any bond, the commissioner shall give notice of the failure to the sureties of the bond and demand payment of the tax, penalties and interest within ten (10) days. If the sureties of the taxpayer's bond shall fail or refuse to pay the penal sum demanded within the ten (10) days allowed, the commissioner may file a notice of tax lien with the circuit clerk of the county in which the sureties reside or own property, which shall be enrolled upon the judgment roll, and the commissioner may proceed to collect from the sureties as provided in this section for collecting from any judgment debtor.

The commissioner is hereby authorized to pay the clerk's fee for enrolling certificates of indebtedness and any court costs that may be adjudged against the department or commissioner out of funds appropriated by the Legislature to defray expenses of the Department of Revenue.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4; Laws, 1990, ch. 332, § 1; Laws, 2005, ch. 499, § 14; Laws, 2014, ch. 412, § 13, eff from and after Jan. 1, 2015.

Cross References — Enrollment of judgments, generally, see § 11-7-189.
Attachment at law against debtors, see § 11-33-1 et seq.
Garnishment proceedings, see § 11-35-1 et seq.
Executions, generally, see § 13-3-111 et seq.
State Tax Commission as meaning Department of Revenue, see § 27-7-3.

JUDICIAL DECISIONS

1. In general.

No exception to the rule that administrative remedies must be exhausted before resorting to the courts for relief against a deficiency assessment of state income tax based on a change in net income made by the federal Internal Revenue Service, may be based on the construction by the tax commissioner of the original return. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

This provision applies to the collection of a deficiency assessment of state income tax. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

The issue of a warrant for the collection of a delinquent tax is not a prerequisite to the assessment of a penalty for nonpayment. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

ATTORNEY GENERAL OPINIONS

Each lien recorded on the judgment roll for failure to pay income taxes, penalties, or interest represents a different debt owed to the State Tax Commission, and a separate writ of garnishment should be issued for each recorded state tax lien. Anderson, Jan. 24, 1992, A.G. Op. #91-0952.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxations § 730 et seq. (collection).

CJS. 85 C.J.S., Taxation §§ 2075-2077.

Law Reviews. The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 27-7-57. Warrant for collection of tax.

The commissioner may issue a warrant under official seal directed to the sheriff of any county of the state, or to a special agent of the commission, commanding him to immediately seize and sell the real and personal property of the person owning the same found within the county in which the judgment is enrolled for the payment of the amount of tax, penalties, and interest, if any, as set forth in the warrant, and the cost of executing the warrant.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4; Laws, 1976, ch. 380, § 1, eff from and after passage (approved April 26, 1976).

Cross References — Sheriff's execution and return of process, see § 19-25-37.

JUDICIAL DECISIONS

1. In general.

No exception to the rule that administrative remedies must be exhausted before resorting to the courts for relief against a deficiency assessment of state income tax based on a change in net income made by the federal Internal Revenue Service, may be based on the destruction by the tax commissioner of the original return. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

This provision applies to the collection of a deficiency assessment of state income tax. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

The issuance of a warrant for the collection of a delinquent tax is not a prerequisite to the assessment of a penalty for nonpayment. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

§ 27-7-59. Jeopardy assessment and warrant.

If the commissioner has cause to believe and believes that the collection of taxes, due by any taxpayer will be jeopardized by delay, he may assess such taxes, immediately, together with damages and interest, and may immediately file with the circuit clerk a notice of tax lien for income taxes, penalties, and interest and issue a jeopardy warrant under official seal directed to the sheriff of any county of this state or to a special agent of the tax commission.

The circuit clerk shall proceed as provided in Section 27-7-55, upon receiving a copy of the notice of tax lien from the commissioner. Any tax determined to be due under a jeopardy assessment, shall be a debt due the state and, when thus enrolled upon the judgment roll of the county, shall be the equivalent of any enrolled judgment of a court of record and shall constitute a lien on all the property and rights to property of the judgment debtor.

The sheriff, or the special agent, as the case may be, upon receipt of the jeopardy warrant, shall immediately proceed in accordance with Section 27-7-61. However, where property has been seized under authority of a jeopardy warrant, the taxpayer, may file a petition for a hearing and revision of the assessment with the commissioner at any time prior to the date of the sale by the enforcement officer, provided such taxpayer executes a supersedeas surety bond with a surety company, authorized to do and doing business in this state, for double the amount of the assessment. Such bond shall be conditioned that any taxes, penalties, interest, and costs adjudged to be due after the hearing will be paid promptly upon order of the tax commission.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4; Laws, 1976, ch. 380, § 2, eff from and after passage (approved April 26, 1976).

Cross References — Sheriff's execution and return of process, see § 19-25-37.

Tax Commission as meaning Department of Revenue, see § 27-7-3.

JUDICIAL DECISIONS

1. In general.

No exception to the rule that administrative remedies must be exhausted before resorting to the courts for relief against a deficiency assessment of state income tax based on a change in net income made by the federal Internal Revenue Service, may be based on the destruction by the tax commissioner of the original return. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

This provision applies to the collection of a deficiency assessment of state income tax. Davis v. Barr, 250 Miss. 54, 157 So. 2d 505 (1963), clarified, 250 Miss. 73, 163 So. 2d 745 (1964), cert. denied, 377 U.S. 965, 84 S. Ct. 1647, 12 L. Ed. 2d 736 (1964).

The issuance of a warrant for the collection of a delinquent tax is not a prerequisite to the assessment of a penalty for nonpayment. Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).

RESEARCH REFERENCES

ALR. Dischargeability of claim for taxes under 1966 Amendment to § 17a(1) of Bankruptcy Act [11 USCS § 35(a)(1)] as affecting government's right to enforce tax lien against after-acquired property of bankrupt. 5 A.L.R. Fed. 1004.

§ 27-7-61. Execution by sheriff or special agent; fees; disposition of property.

The sheriff, or special agent of the Tax Commission, upon receipt of a warrant or a jeopardy warrant, shall immediately seize any property of the taxpayer named in the warrant, in all respect, with like effect, and in the manner prescribed by law with respect to executions of judgments, and he shall execute such warrant and return it to the commissioner, and pay to him the money collected by virtue thereof by the date specified therein, but not to exceed sixty (60) days.

The sheriff or special agent shall be entitled to the fees for his services in the same amount, and to be collected in like manner, as provided by Sections 25-7-19 and 25-7-21, Mississippi Code of 1972, for like services under a writ of execution. Provided, however, that the minimum total of all such fees shall be Ten Dollars ($10.00). All such fees collected by a special agent of the Tax Commission shall be paid to the Tax Commission and deposited in a fund to be expended by the chairman to help defray the costs of carrying out the provisions of Sections 27-7-55 through 27-7-67. Provided, further, that when a warrant issued to a sheriff shall be withdrawn by the commissioner prior to its expiration date, the commissioner is authorized to pay to the sheriff the fees allowed by law for services actually performed and costs actually incurred, out of money collected as fees from the taxpayer, or from funds appropriated for the operation of the Tax Commission.

Real property shall be disposed of according to Section 13-3-163, Mississippi Code of 1972, and, except as otherwise provided in this paragraph, personal property shall be disposed of according to Section 13-3-165, Mississippi Code of 1972. However, perishable personal property may be disposed of as provided by Section 13-3-167, Mississippi Code of 1972. In addition to the advertising requirements provided in Section 13-3-165 for the sale of personal property, the Tax Commission may, when the commissioner determines the need to do so, advertise sales of personal property in any additional manner determined appropriate by the commissioner. The costs of any such additional advertising shall be considered a cost of the sale and shall be collected from the proceeds of the sale. The failure to advertise the sale of personal property in any form other than that required by Section 13-3-165 shall not invalidate a sale. For any sale of property by the Tax Commission, the commissioner may determine acceptable methods of payments to be received from the highest bidder for any sale.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4; Laws, 1976, ch. 380, § 3; Laws, 2002, ch. 404, § 1, eff from and after passage (approved Mar. 19, 2002.)

Cross References — Executions, generally, see § 13-3-111 et seq.

When sales of land may be made, and advertising of such sale, see § 13-3-163.

Sale of perishable goods, see § 13-3-167.

Sheriff's execution and return of process, see § 19-25-37.

Sheriff's liability for failure to make return, execute process, or pay over collection, see §§ 19-25-41, 19-25-45.

Tax Commission as meaning Department of Revenue, see § 27-7-3.

Warrants for collection, see §§ 27-7-57, 27-7-59.

Under Former Law

1. In general.

Sale of land for payment of income taxes did not deprive owner of property without due process of law. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

RESEARCH REFERENCES

ALR. Right of purchaser at execution sale, upon failure of title, to reimbursement or restitution from judgment creditor. 33 A.L.R.4th 1206.

§ 27-7-63. Commissioner may bid at sales.

When any property is offered for sale under authority of a warrant or writ of execution for the collection of income taxes, penalties, or interest, and no bid is submitted equal to the reasonable value of the property, the commissioner or his agent may bid therefor, on behalf of the State of Mississippi, an amount not to exceed the amount of the warrant and costs, and, if declared the successful bidder for the particular piece of property, such title as may be conveyed shall pass to the state, and the state's interest in the property may then be sold at public or private sale to the best interest of the state; provided, however, that the taxpayer shall have a period of sixty (60) days from the date of such sale within which to redeem such property, except perishables, by payment of the entire tax due together with all penalties, interest, and lawful costs. In the event of such redemption, the commissioner shall issue, or cause to be issued, his certificate of redemption upon request of the taxpayer, which certificate of redemption may be filed as a deed in the appropriate public office.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4, eff from and after January 1, 1971.

Cross References — Bidding off land by Commissioner of Revenue at tax sales, generally, see § 27-3-43.

§ 27-7-65. Alias executions.

Whenever any property, personal or real, which is seized and sold by virtue of Sections 27-7-55 through 27-7-63, is not sufficient to satisfy the claim of the State of Mississippi for which distraint or seizure is made, the commissioner may, thereafter, and as often as the same may be necessary, issue alias warrants or have issued alias writs of execution authorizing the sheriff or special agent of the tax commission to proceed to seize and sell in like manner any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4, eff from and after January 1, 1971.

Cross References — Executions, generally, see § 13-3-111 et seq.
Sheriff's execution and return of process, see § 19-25-37.
Tax commission as meaning Department of Revenue, see § 27-7-3.

§ 27-7-67. Sheriff and special agent not personally liable.

Every warrant issued to a sheriff of any county of this state or to a special agent of the state tax commission shall provide that the state tax commission will indemnify and save harmless the said sheriff or special agent against all damages which he may sustain in consequence of the seizure or sale of the property, and the commissioner is hereby authorized to pay all obligations, which may accrue by reason of the issuance and execution of any warrant authorized by Sections 27-7-55 through 27-7-65, out of funds appropriated by the legislature to defray the expenses of the state tax commission. Any claimant accepting any payment authorized to be made by the commissioner under the provisions of this section shall be barred of any action against the sheriff or special agent of the tax commission for damages sustained by the same as a consequence of the levying of process authorized by Sections 27-7-55 through 27-7-65.

SOURCES: Codes, 1942, § 9220-27; Laws, 1934, ch. 120; Laws, 1942, ch. 134; Laws, 1952, ch. 402, § 26; Laws, 1954, ch. 390; Laws, 1958, ch. 556; Laws, 1971, ch. 512, § 4, eff from and after January 1, 1971.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

JUDICIAL DECISIONS

1. In general.

Mississippi statute requiring state to indemnify and hold harmless a special agent of Tax Commission for any liability arising out of execution of warrant did not waive State's Eleventh Amendment immunity from suit in federal court; statute contained no unequivocal waiver. Smith v. Luther, 973 F. Supp. 601 (N.D. Miss. 1997).

§ 27-7-69. Tax upon settlement of fiduciary's account.

No final account of a fiduciary shall be allowed by any court unless such account shows, and the judge of said court finds, that all income taxes imposed upon said fiduciary, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit, or otherwise. The certificate of the commissioner of income tax and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

SOURCES: Codes, 1942, § 9220-28; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 27, eff from and after January 1, 1952.

Cross References — Fiduciary returns, see § 27-7-35.
Final account of executor or administrator, see § 91-7-297.
Guardian's final account, see § 93-13-77.

§§ 27-7-71 and 27-7-73. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

§ 27-7-71. [Codes, 1942, § 9220-30; Laws, 1934, ch. 120; Laws, 1938, ch. 116; Laws, 1948, ch. 438, § 2; Laws, 1952, ch. 402, § 29; Laws, 1958, ch. 554, § 9; Laws, 1971, ch. 512, § 5, eff from and after January 1, 1971.]

§ 27-7-73. [Codes, 1942, § 9220-31; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 30; Laws, 1971, ch. 512, § 6, eff from and after January 1, 1971.]

Editor's Note — Former §§ 27-7-71 and 27-7-73 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-7-75. Receipts for taxes.

When requested, the commissioner shall give any person making any payment a full written or printed receipt, stating the amount paid and the particular account for which such payment was made, and showing for which instalment same is paid, and shall pay all moneys into the state treasury on auditor's warrant as other moneys are paid into the state treasury.

SOURCES: Codes, 1942, § 9220-34; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 33, eff from and after January 1, 1952.

JUDICIAL DECISIONS

1. Applicability.

Argument of Mississippi State Tax Commission (MSTC)—that because all tax monies collected by the MSTC through the diversion statute were deposited into the state treasury pursuant to Miss. Code Ann. § 27-7-75, then a receiver's suit would actually be a suit against the state and any judgment would be paid by the state, so that the state's Eleventh Amendment immunity applied— was misplaced. Relief sought by the reciever would not effectively result in any monetary damages being paid from funds belonging to the state. Nabers v. Miss. State Tax Comm'n, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 75211 (S.D. Miss. Aug. 25, 2009).

§ 27-7-77. Credit for income taxes paid.

(1) Individual resident taxpayers of Mississippi whose gross income is derived from sources both within and without the State of Mississippi shall be allowed a tax credit for income tax paid to another state, territory of the United States, or the District of Columbia against the amount of tax found to be due to the State of Mississippi.

(2) This tax credit shall be limited in amount, however, as provided below:

(a) The tax credit may not exceed the amount of income tax due the State of Mississippi.

(b) The tax credit may not exceed the amount of income tax actually paid to the other state.

(c) The tax credit may not exceed an amount computed by applying the highest Mississippi rates to the net taxable income reported to the other state. The net taxable income reported to the other state shall be computed on the basis of the provisions contained in the income tax laws and regulations of said other state. Highest rates are meant to mean the highest rates at which the net taxable income reported to the other state is taxable by the State of Mississippi.

(3) Before an individual resident taxpayer of Mississippi may claim the credit allowed under this section, he shall file with his tax return a certificate showing amounts of gross income, net income, and net taxable income derived from sources without this state, together with the amount of tax paid or to be paid on such income.

SOURCES: Codes, 1942, § 9220-38; Laws, 1934, ch. 120; Laws, 1940, ch. 124; Laws, 1944, ch. 123, § 2; Laws, 1952, ch. 402, § 37; Laws, 1954, ch. 371; Laws, 1966, ch. 633, § 1, eff from and after July 1, 1966.

Cross References — Credit for shareholders for payment of income tax by S corporations on behalf of shareholders, see § 27-8-21.

Under Former Law

1. In general.
2. Particular applications.

1. In general.

The manifest purpose of § 37, Chapter 120, Laws of 1934, in providing for reciprocal exemption, was to avoid the taxation of one's income by more than one state. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

As regards reciprocal exemption, Code 1942, § 9220-38 was interpreted to mean that the legislature of Mississippi proposed to sister states that if they would exempt citizens of this state from an income tax that their own citizens were required to pay, then Mississippi would exempt citizens of such states from the payment of the income tax that Mississippi citizens were required to pay under the income tax act. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

Exemption from taxation in its broad meaning means that whenever a tax is laid on property which does not apply to all property within the jurisdiction of the taxing authorities, the property not taxed may be said to be exempted; and in its narrow meaning, an exemption from taxation is the grant of immunity to particular persons or corporations or to persons or corporations of a particular class from a tax upon property or an excise which persons or corporations generally within the same taxing district are obligated to pay. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

A statute granting exemption from taxes must be strictly construed against the claimed exemption and such a statute should never be enlarged by construction in favor of the nonliability. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

The principle that exemption laws are to be liberally construed in favor of the owner of property when it is sought to be subjected to sale under execution or attachment does not prevail when an exemption is claimed from liability for taxes. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

In order for a citizen of a state other than the State of Mississippi to be exempt from an income tax on all income received from within the State of Mississippi, the state of which he is a citizen must have a general income tax law at least similar in principle to that of Mississippi, as to the character and source of income tax, in order for such nonresident to be entitled to the exemption on the ground of reciprocity, or to avoid double taxation. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

2. Particular applications.

Income tax statute of Tennessee, which in effect taxed income derived from stock and bonds which would not otherwise be taxed by the ad valorem taxes, levied no income tax within the meaning of the reciprocity clause of this section. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

Where the state of Tennessee had no statute that would impose an income tax upon a citizen and resident of that state for any income produced by him on his farm or plantation in Mississippi, the reciprocity exemption provided for by Code 1942, § 9220-38 was not applicable. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

Where a statute of the state of Tennessee had no general income tax law, either on gross or net incomes, containing a reciprocity provision, but merely a statute providing for taxation of income derived by way of dividends from stock or bonds of persons, partnerships, etc., in the state of Tennessee, exemption claimed by resident of Tennessee receiving income from farm in Mississippi should be denied. Clement v. Stone, 195 Miss. 774, 15 So. 2d 517, 152 A.L.R. 742 (1943).

RESEARCH REFERENCES

ALR. Income tax: constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country. 12 A.L.R.2d 359.

Decision to take foreign income taxes as federal credit under Section 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes. 77 A.L.R.4th 823.

§ 27-7-79. Administration of article.

(1) The commissioner shall have exclusive jurisdiction and be charged with the administration and enforcement of the provisions of this article, except as otherwise provided.

(2) The commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, is hereby authorized, by any agent designated by the commissioner for that purpose, to examine any books, papers, records or memoranda, bearing upon

the matter required to be included in the return, and may require the attendance of persons rendering a return or of any officer or employee of such person, or of any person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in the return, with power to administer oaths to such person or persons.

(3) If any person summoned to appear under this article to testify, or produce books, papers or other data, shall refuse to do so, the chancery court for the district in which the person resides shall have jurisdiction by appropriate process to compel such attendance, testimony or production of books, papers or other data.

(4) The commissioner, with the approval of the Governor, may appoint and remove such officers, agents, deputies, clerks and employees as he may deem necessary, such persons to have such duties and powers as the commissioner may, from time to time, prescribe. The salaries of all officers, agents and employees employed by the commissioner shall be such as he may prescribe, with the approval of the Governor, not to exceed such amounts as may be appropriated by the Legislature, and the members of the commission and such officers, agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties, not to exceed the amount appropriated therefor by the Legislature.

(5) The commissioner shall designate certain special agents appointed under this section and evidenced by a written certificate of appointment under the seal of the commission, of which judicial notice shall be taken by all courts of this state. Such agents, when in possession of a warrant issued under authority of this article, shall have all the powers and duties of the sheriff in enforcing the provisions of the article relating to the warrant thus issued, and in making arrests of persons obstructing or seeking to obstruct the execution of the warrant, or in serving any writ, notice or order connected with the enrolled judgment for which the warrant is issued by whatever officer or authority of court issued.

(6) The commissioner may require such of the officers, agents, and employees, as he may designate, to give bond for the faithful performance of their duties, in such form and with such securities as he may determine, and all premiums on such bonds shall be paid by the commissioner out of the monies appropriated for the purposes of this article.

(7) All officers empowered by law to administer oaths and the members of the commission, and such officers as it may designate, shall have power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this article or the rules and regulations of the commissioner.

(8) All agents of the commissioner shall have, for identification purposes, proper credentials signed by the chairman of the commission.

(9) The commissioner shall prepare and publish annually statistics reasonably available with respect to the operation of this law, including classification of taxpayers and of the income, the amounts allowed as deductions, exemptions and credits, and also a statement of the cost of administering this article and any other facts deemed pertinent and valuable.

SOURCES: Codes, 1942, § 9220-32; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 31; Laws, 1958, ch. 554, § 10; Laws, 1971, ch. 512, § 7; Laws, 2001, ch. 429, § 1; Laws, 2005, ch. 499, § 15, eff from and after July 1, 2005.

Cross References — Appointments by Governor, generally, see § 7-1-5.

Subpoena for witnesses, generally, see §§ 13-3-93, 99-9-11.

Commissioner of Revenue of the Department of Revenue, see § 27-3-1 et seq.

Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

Commissioner as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

Execution of warrants, see §§ 27-7-57 through 27-7-61.

JUDICIAL DECISIONS

1. In general.

The court referred to this section in determining the proportion of income of a manufacturing company having plants in Mississippi and other states which is taxable in Mississippi. Reliance Mfg. Co. v. Barr, 245 Miss. 86, 146 So. 2d 569 (1962).

§ 27-7-81. Regulatory authority.

The commissioner, with the approval of the Governor, may from time to time make such rules and regulations, not inconsistent with this article, as he may deem necessary to enforce its provisions.

SOURCES: Codes, 1942, § 9220-33; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 32, eff from and after January 1, 1952.

Cross References — Commissioner of Revenue of the Department of Revenue, see § 27-3-1 et seq.

Commissioner as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

JUDICIAL DECISIONS

1. In general.

The court referred to this section in determining the proportion of income of a manufacturing company having plants in Mississippi and other states which is taxable in Mississippi. Reliance Mfg. Co. v. Barr, 245 Miss. 86, 146 So. 2d 569 (1962).

Tax commission's statutory authority to make such regulations, not inconsistent with the income tax law, as may be deemed necessary to enforce its provisions, does not extend to a regulation operating to impose a tax liability not authorized by the statute. Monaghan v. Reliance Mfg. Co., 236 Miss. 462, 111 So. 2d 225 (1959).

A foreign corporation was not in a position to contend that it had been taxed under regulations which had not been approved by the governor, where it did not raise the question in the court below, either by pleadings or otherwise, and failed to offer any proof whatsoever thereon, and it further appeared from the record that the regulations had been approved by the governors for the years in question. Stapling Machs. Co. v. Monaghan, 232 Miss. 484, 99 So. 2d 649 (1958), corrected, 232 Miss. 492, 101 So. 2d 359 (1958).

§ 27-7-83. Confidentiality of reports and returns; release of certain information under certain circumstances.

(1) Returns and return information filed or furnished under the provisions of this chapter shall be confidential, and except in accordance with proper judicial order, as otherwise authorized by this section or as authorized in Section 27-4-3, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue or the Mississippi Department of Information Technology Services, or any former employee thereof, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required. The provisions of this section shall apply fully to any federal return, a copy of any portion of a federal return, or any information reflected on a federal return which is attached to or made a part of the state tax return. Likewise, the provisions of this section shall apply to any federal return or portion thereof, or to any federal return information data which is acquired from the Internal Revenue Service for state tax administration purposes pursuant to the Federal-State Exchange Program cited at Section 6103, Federal Internal Revenue Code. The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum, but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted.

(2) Returns and return information with respect to taxes imposed by this chapter shall be open to inspection by or disclosure to the Commissioner of the Internal Revenue Service of the United States, or the proper officer of any state imposing an income tax similar to that imposed by this chapter, or the authorized representatives of such agencies. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agencies, or the district director in the case of the Internal Revenue Service, and only to the representatives of such agencies designated in a written statement to the Commissioner of Revenue as the individuals who are to inspect or to receive the return or return information on behalf of such agency. The Commissioner of Revenue is authorized to enter into agreements with the Internal Revenue Service and with other states for the exchange of returns and return information data, or the disclosure of returns or return information data to such agencies, only to the extent that the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of the tax laws of this state.

(3)(a) The return of a person shall, upon written request, be open to inspection by or disclosure to:

(i) In the case of the return of an individual, that individual;

(ii) In the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;

(iii) In the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;

(iv) In the case of the return of a corporation or a subsidiary thereof, any person designated by resolution of its board of directors or other similar governing body, or any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer;

(v) In the case of the return of an estate, the administrator, executor or trustee of such estate, and any heir at law, next of kin or beneficiary under the will, of the decedent, but only to the extent that such latter persons have a material interest which will be affected by information contained therein;

(vi) In the case of the return of a trust, the trustee or trustees, jointly or separately, and any beneficiary of such trust, but only to the extent that such beneficiary has a material interest which will be affected by information contained therein;

(vii) In the case of the return of an individual or a return filed jointly, any claimant agency seeking to collect a debt through the setoff procedure established in Sections 27-7-701 through 27-7-713 and Sections 27-7-501 through 27-7-519, from an individual with respect to whom the return is filed.

(b) If an individual described in paragraph (a) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee or guardian of his estate.

(c) If substantially all of the property of the person with respect to whom the return is filed is in the hands of a trustee in bankruptcy or receiver, such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Commissioner of Revenue finds that such receiver or trustee, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

(d) Any return to which this section applies shall, upon written request, also be open to inspection by or disclosure to the attorney-in-fact duly authorized in writing by any of the persons described in paragraph (a) of this subsection to inspect the return or receive the information on his behalf, subject to the conditions provided in paragraph (a).

(e) Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer if the Commissioner of Revenue determines that such disclosure would not seriously impair state tax administration.

(4) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department

of Revenue, and the same prohibitions against disclosure which apply to the Department of Revenue shall apply to the State Auditor and his employees or former employees.

(5) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(6) Information required by the University Research Center to prepare the analyses required by Sections 57-13-101 through 57-13-109 shall be furnished to the University Research Center upon request. It shall be unlawful for any officer or employee of the University Research Center to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

(7) Information required by the Mississippi Development Authority to prepare the reports required by Section 57-1-12.2 shall be furnished to the Mississippi Development Authority upon request. It shall be unlawful for any officer or employee of the Mississippi Development Authority to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the Mississippi Development Authority from the Department of Revenue other than as may be required by Section 57-1-12.2 in a report prepared pursuant to Section 57-1-12.2.

(8) Information necessary to comply with Chapter 13, Title 85 may be furnished to financial institutions. It shall be unlawful for any officer or employee of the financial institution to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the financial institution from the Department of Revenue other than as may be authorized by Chapter 13, Title 85.

(9) Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General, or any other attorney representing the state, of the report or return of any taxpayer who shall bring action to set aside the tax thereon, or against whom any action or proceeding has been instituted to recover any tax or penalty imposed.

(10) Nothing in this section shall prohibit the commissioner from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16.

(11) Reports and returns required under the provisions of this chapter shall be preserved in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

(12) The Department of Revenue is authorized to disclose to the Child Support Unit and to the Fraud Investigation Unit of the Department of Human Services without the need for a subpoena or proper judicial order the name, address, social security number, amount of income, source of income, assets and other relevant information, records and tax forms for individuals who are delinquent in the payment of any child support as defined in Section 93-11-101 or who are under investigation for fraud or abuse of any state or federal program or statute as provided in Section 43-1-23.

(13) Nothing in this section shall prohibit the Department of Revenue from exchanging information with the federal government that is necessary to offset income tax refund payment on debts owed to this state or the United States.

(14) Nothing in this section shall prohibit the department from making available information that is necessary to be disclosed for the administration and enforcement of Section 27-7-87.

SOURCES: Codes, 1942, § 9220-35; Laws, 1934, ch. 120; Laws, 1952, ch. 402, § 34; Laws, 1975, ch. 516, § 2; Laws, 1978, ch. 342, § 1; Laws, 1981, ch. 501, § 21; Laws, 1984; ch. 447, § 3; Laws, 1985, ch. 364, § 11; Laws, 1985, ch. 464, § 8; Laws, 1988, ch. 349, § 3; Laws, 1997, ch. 588, § 145; Laws, 2004, ch. 516, § 3; Laws, 2010, ch. 327, § 2; Laws, 2010, ch. 385, § 2; Laws, 2010, ch. 388, § 3; Laws, 2010, ch. 481, § 2; Laws, 2014, ch. 517, § 9; Laws, 2017, ch. 407, § 6, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 2 of ch. 481, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 2 of ch. 327, Laws of 2010, effective July 1, 2010 (approved March 15, 2010), Section 3 of ch. 388, Laws of 2010, July 1, 2010 (approved March 17, 2010) and Section 2 of ch. 385, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 481, Laws of 2010, which contains language that specifically provides that it supersedes § 27-7-83 as amended by Laws of 2010, chs. 327, 385 and 388.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (10) by substituting "...debts owed to this state or the United States..." for "...debts owed to this state of the United States..." The Joint Committee ratified this correction at its July 22, 2010, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the internal statutory references. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Laws of 1984, ch. 447, § 7, effective April 30, 1984, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 7 and 13, Mississippi Code of 1972, prior to July 1, 1984, whether such assessments, appeals, suits, claims or actions shall have been begun before July 1, 1984, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to July 1, 1984, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1985, ch. 364, § 11, amended this section effective July 1, 1985. Subsequently, section 8, ch. 464, Laws, 1985, effective July 1, 1985, also amended this section without referring to ch. 364. As set out above, this section contains the language of section 8, ch. 464, which represents the latest legislative expression on the subject.

Laws of 1997, ch. 588, § 150, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

Amendment Notes — The 2017 amendment added (8) and redesignated the remaining subsections accordingly.

Cross References — Requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see § 25-59-31.

Violation of this section is a misdemeanor, see § 27-7-87.

Release of information by the Department of Revenue pursuant to provisions for setoffs against income tax refunds for debts owed for child support or maintenance, see § 27-7-517.

Confidentiality of corporation franchise tax returns, see § 27-13-57.

Federal Aspects — The federal-state exchange program cited in subsection (1) appears as 26 USCS § 6103.

ATTORNEY GENERAL OPINIONS

There is no authority for an assessor to require inspection of state tax returns in making his valuation of property. Martin, III, Oct. 6, 2000, A.G. Op. #2000-0562.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information. 1 A.L.R.4th 959.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 495, 496 (confidentiality of reports).

§ 27-7-85. Community property not recognized.

For the purpose of this article, community property shall not be recognized in Mississippi.

SOURCES: Codes, 1942, § 9220-39; Laws, 1952, ch. 402, § 38, eff from and after January 1, 1952.

§ 27-7-87. Penalties.

(1) Any person making the returns and reports required by this article, who shall knowingly declare or swear falsely, shall be guilty of perjury and, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

(2) If any individual, corporation, partnership or fiduciary, or any officer, employee, or representative thereof, or member of a partnership, required to pay any tax, make any return, or supply any information or exhibit any books, or records, when requested to do so by the commissioner, or any agent designated by the commissioner, whether with reference to their own returns or not, willfully refuses to do so, the same shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or be imprisoned not more than six (6) months, or both. Failure by any of the previously mentioned entities to supply information pursuant to a written request within a reasonable amount of time may subject the entity to a civil penalty of Five Hundred Dollars ($500.00) per each written request.

(3) Any person violating the provisions of Section 27-7-83 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not exceeding One Thousand Dollars ($1,000.00), or by imprisonment not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of five (5) years thereafter.

(4)(a) Any preparer who is grossly negligent in the preparation of a tax return shall be liable for a penalty of Five Hundred Dollars ($500.00) for each return so prepared. Every paid preparer must legibly sign each return prepared and must also furnish his federal employer identification number or preparer tax identification number issued by the Internal Revenue Service.

(b) For purposes of this subsection, the term "grossly negligent" shall include, but not be limited to:

(i) Submission of returns reflecting a tax liability that is understated by twenty-five percent (25%) or greater.

(ii) Submission of returns containing errors affecting the calculation of tax after being notified of these types of errors by the department.

(iii) Submission of returns claiming a position that is not reasonably sustainable by the department, Board of Tax Appeals or an appropriate appellate court.

(iv) Submission of returns reporting deductions, exemptions or other reductions to income that cannot be documented to support the return.

(c) The penalty provided for in this subsection may be imposed for each return that a preparer has so prepared.

(d) If a paid preparer is assessed a penalty under this subsection and he fails to legibly sign each return and include his federal employer identification number or preparer tax identification number issued by the Internal Revenue Service, the paid preparer shall be liable for a penalty of Five Hundred Dollars ($500.00) in addition to any other penalty authorized by this subsection.

(e) If any person is found to be engaging in the activity of preparing tax returns for others after being penalized as provided for in this subsection, it shall be the duty of the commissioner to proceed to seek an injunction to prevent the person from continuing the preparation of returns.

(5) Any individual, corporation or other entity who fails to file a return, or fails to file a complete return, within the prescribed time including extensions and after a written request therefor from the Department of Revenue may be subject to a penalty. The penalty is Twenty-five Dollars ($25.00) per incomplete or omitted attachment or schedule. The maximum penalty per return is Five Hundred Dollars ($500.00). The required schedules or attachments are to be specified by the commissioner in the Income Tax Regulations or the instructions with the tax forms.

(6) The commissioner shall make assessments against and effect collection from persons who are subjected to a penalty under this section in the same manner that is provided for the assessment and collection of taxes levied by this chapter.

SOURCES: Codes, 1942, §§ 9220-29, 9220-35; Laws, 1934, ch. 120; Laws, 1952, ch. 402, §§ 28, 34; Laws, 1989, ch. 485, § 8; Laws, 2007, ch. 375, § 1; Laws, 2010, ch. 327, § 1, eff from and after July 1, 2010.

Cross References — Suits for taxes by Attorney General, district attorneys, or county attorneys, see § 7-5-55.

Board of Tax Appeals generally, see § 27-4-1 et seq.

Crime of perjury, see § 97-9-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Evidence was sufficient.

Convictions for failure to file a tax return were affirmed because (1) there was sufficient evidence, in the form of testimony from three Mississippi State Tax Commission employees, for the jury to find that defendant committed the crime of failure to file a tax return, thus, the trial court did not commit error by denying defendant's motion for directed verdict; and (2) during the jury instruction, the trial court properly denied a jury instruction that improperly commented on the evidence and properly denied two instructions regarding willfulness as there was no evidence to support them. Salman v. State, — So. 2d —, 2004 Miss. App. LEXIS 72 (Miss. Ct. App. Feb. 3, 2004), writ of certiorari denied by 882 So. 2d 234, 2004 Miss. LEXIS 993 (Miss. Aug. 5, 2004).

RESEARCH REFERENCES

ALR. Tax preparer's liability to taxpayer in connection with preparation of tax returns. 81 A.L.R.3d 1119.

What constitutes a "material" fact for purposes of 18 USCS § 1001, relating to falsifying or concealing facts in matter within jurisdiction of United States department or agency. 49 A.L.R. Fed. 622.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 738 et seq. (penalties, interest, cost).

13 Am. Jur. Trials, Defending Federal Tax Evasions, § 1 et seq.

CJS. 85 C.J.S., Taxation § 2077.

§ 27-7-88. Contribution to Mississippi Burn Care Fund from state income tax refund; additional contribution at time of filing tax return authorized.

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the Mississippi Burn Care Fund created in Section 7-9-70, by marking the appropriate box printed on the return under this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to the fund.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"MISSISSIPPI BURN CARE FUND

I wish to contribute ( )$1 ( )$5 ( )$10 ( )Other $________ of my TAX REFUND TO THE MISSISSIPPI BURN CARE FUND."

(2) Each resident individual taxpayer who files a Mississippi income tax return, whether or not the individual will receive a tax refund from the State Tax Commission, may choose to make a contribution to the Mississippi Burn Care Fund created in Section 7-9-70 at the time of filing his or her tax return, by marking the appropriate box printed on the return under this subsection and paying the amount of the contribution to the State Tax Commission when filing the tax return. The contribution authorized to be made under this subsection shall be in addition to any income tax liability that the individual pays when filing the tax return or in addition to the amount of the individual's tax refund that is designated as a contribution to the fund under subsection (1) of this section. In the case of a joint return, each spouse may make a contribution to the fund under this subsection.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for indicating the amount of the contribution in substantially the following form:

"MISSISSIPPI BURN CARE FUND

I wish to contribute ( )$1 ( )$5 ( )$10 ( )Other $________ to the MISSISSIPPI BURN CARE FUND, in addition to the payment of my income tax liability or in addition to the amount of my tax refund that I designated as a contribution to the fund."

(3) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized in subsections (1) and (2) of this section shall be used.

(4) Subsection (1) of this section shall apply to taxable years beginning on or after January 1, 2001, and subsection (2) of this section shall apply to taxable years beginning on or after January 1, 2007.

(5) The Chairman of the State Tax Commission shall determine annually the total amount designated to be paid to the fund under subsection (1) of this section, along with all interest earned thereon, and the total amount contributed to the fund under subsection (2) of this section, and shall report the total amounts to the State Treasurer, who shall pay those amounts into the Mississippi Burn Care Fund.

SOURCES: Laws, 2000, ch. 319, § 1; Laws, 2005, 2nd Ex Sess, ch. 47, § 3; Laws, 2007, ch. 569, § 4, eff from and after July 1, 2007.

Editor's Note — The quotation mark following "to the MISSISSIPPI BURN CARE FUND" in the Mississippi Burn Care Fund form in (2) is an apparent typographical error. The section appears as amended by Laws of 2007, ch. 569, § 4.

Cross References — Mississippi Burn Care Fund, see § 7-9-70.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

Mississippi Burn Center, see § 37-115-45.

§ 27-7-89. Contribution to Mississippi Educational Trust Fund from state income tax refund.

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the "Mississippi Educational Trust Fund" authorized in House Concurrent Resolution No. 35, 1985 Regular Session, by marking the appropriate box printed on the return pursuant to this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to such fund.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"MISSISSIPPI EDUCATIONAL TRUST FUND.

I wish to contribute ( )$1 ( )$5 ( )$10 ( ) other $______ of my TAX REFUND TO THE MISSISSIPPI EDUCATIONAL TRUST FUND."

(2) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized herein shall be used.

(3) This section shall apply to taxable years beginning on or after January 1, 1986.

(4) The Chairman of the State Tax Commission shall determine annually the total amount designated by individuals to be paid to the fund, along with all interest earned thereon, and shall report such amount to the State Treasurer who shall pay such amount into the "Mississippi Educational Trust Fund" established in House Concurrent Resolution No. 35, 1985 Regular Session (Chapter 546, Laws of 1985).

(5) This section shall take effect and be in force from and after the date House Concurrent Resolution No. 35, 1985 Regular Session (Chapter 546, Laws of 1985) is ratified by the electorate.

SOURCES: Laws, 1985, ch. 351, § 28; Laws, 2000, ch. 319, § 2, eff from and after July 1, 2000.

Editor's Note — Chapter 546 [House Concurrent Resolution No. 35], Laws of 1985, referred to in this section, proposed to amend the Mississippi Constitution of 1890 by adding Section 206A which provided for the creation of a trust fund in the State Treasury (see Volume 1, supplement for contents of Section 206A). The resolution was submitted and ratified by the electorate on November 4, 1986, and, by proclamation of the Secretary of State on November 20, 1986, was inserted in the state constitution.

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

§ 27-7-90. Contribution to Mississippi Commission for Volunteer Service Fund from state income tax refund.

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the "Mississippi Commission for Volunteer Service Fund" established in Section 43-55-29, by marking the appropriate box printed on the return pursuant to this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to such fund.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"MISSISSIPPI COMMISSION FOR VOLUNTEER SERVICE FUND

I wish to contribute ( )$1 ( )$5 ( )$10 ( ) other $______ of my TAX REFUND TO THE MISSISSIPPI COMMISSION FOR VOLUNTEER SERVICE FUND."

(2) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized herein shall be used.

(3) This section shall apply to taxable years beginning on or after January 1, 1998.

(4) The Chairman of the State Tax Commission shall determine annually the total amount designated by individuals to be paid to the fund, along with all interest earned thereon, and shall report such amount to the State Treasurer who shall pay such amount into the "Mississippi Commission for Volunteer Service Fund" established in Section 43-55-29.

SOURCES: Laws, 1997, ch. 580, § 1, eff from and after July 1, 1997.

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

§ 27-7-91. Designation of contributions to Mississippi Wildlife Heritage Fund on income tax returns.

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the "Wildlife Heritage Fund" by marking the appropriate box printed on the return pursuant to this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to such fund.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"MISSISSIPPI WILDLIFE HERITAGE FUND.

I wish to contribute ( )$1 ( )$5 ( )$10 ( ) other $______ of my TAX REFUND TO THE MISSISSIPPI WILDLIFE HERITAGE FUND."

(2) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized herein shall be used.

(3) This section shall apply to taxable years beginning on or after January 1, 1985.

SOURCES: Laws, 1985, ch. 508, § 1, applicable to taxable years beginning on or after January 1, 1985; Laws, 2000, ch. 319, § 3, eff from and after July 1, 2000.

Cross References — Transfer of powers, duties and functions of State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue, see § 27-7-3.

Establishment of the Wildlife Heritage Fund, see § 49-5-77.

§ 27-7-93. Transfer to Wildlife Heritage Fund of contributions designated on tax returns; expenditures.

(1) The Chairman of the State Tax Commission shall determine annually the total amount designated by individuals to be paid to the fund, along with all interest earned thereon, and shall report such amount to the State Treasurer who shall pay such amount into the "Wildlife Heritage Fund," established in Section 49-5-77.

(2) The Mississippi Commission on Wildlife, Fisheries and Parks may expend such monies deposited into the fund pursuant to subsection (1) of this section only to implement the "Mississippi Natural Heritage Law of 1978," Sections 49-5-141 through 49-5-157, Mississippi Code of 1972, by providing for the protection and management of nongame species, threatened or endangered wildlife or plants, and unique geological formations such as waterfalls, caves and canyons, and by purchasing, leasing, registering, dedicating and maintaining natural areas.

SOURCES: Laws, 1985, ch. 508, § 2; Laws, 2000, ch. 516, § 4, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

§ 27-7-93.1. Contribution to Mississippi Wildlife, Fisheries and Parks Foundation from state income tax refund.

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the "Mississippi Wildlife, Fisheries and Parks Foundation" by marking the appropriate box printed on the return pursuant to this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to such foundation.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"MISSISSIPPI WILDLIFE, FISHERIES AND PARKS FOUNDATION

I wish to contribute ( ) $1 ( ) $5 ( ) $10 ( ) Other $______ of my TAX REFUND TO THE MISSISSIPPI WILDLIFE, FISHERIES AND PARKS FOUNDATION."

(2) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized herein shall be used.

(3) This section shall apply to taxable years beginning on or after January 1, 2006.

(4) The Chairman of the State Tax Commission shall determine annually the total amount designated by individuals to be paid to the foundation, along with all interest earned thereon, and shall report such amount to the State Treasurer who shall pay such amount to the Mississippi Wildlife, Fisheries and Parks Foundation.

SOURCES: Laws, 2006, ch. 405, § 1, eff from and after passage (approved Mar. 15, 2006.)

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

Mississippi Commission on Wildlife, Fisheries and Parks authorized to solicit and receive gifts on behalf of Mississippi Wildlife, Fisheries and Parks Foundation, see § 49-5-76.

§ 27-7-94. Contribution to Mississippi Military Family Relief Fund from state income tax refund.

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the Mississippi Military Family Relief Fund created in Section 33-4-1, to authorize resident individual income taxpayers to designate any portion of their tax refund for deposit into the Mississippi Military Family Relief Fund by marking the appropriate box printed on the return pursuant to this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to such fund.

The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"Mississippi Military Family Relief Fund

I wish to contribute ( ) $1 ( ) $5 ( ) $10 ( ) Other $______ of my tax refund to the Mississippi Military Family Relief Fund."

(2) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized herein shall be used.

(3) This section shall apply to taxable years beginning on or after January 1, 2005.

(4) The Chairman of the State Tax Commission shall determine annually the total amount designated by individuals to be paid to the fund, along with all interest earned thereon, and shall report such amount to the State Treasurer who shall pay such amount into the Mississippi Military Family Relief Fund.

SOURCES: Laws, 2005, 2nd Ex Sess, ch. 6, § 2 eff from and after passage June 14, 2005; Laws, 2007, ch. 447, § 2, eff from and after July 1, 2007.

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

Mississippi Military Family Relief Fund, see § 33-4-1.

§ 27-7-95. Limitations on allowances of losses from sales or exchanges of capital assets.

(1) In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(2) In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus, if such losses exceed such gains, the lower of:

(a) Three Thousand Dollars ($3,000.00) and One Thousand Five Hundred Dollars ($1,500.00) in the case of a married individual filing a separate return, or

(b) The excess of such losses over such gains.

SOURCES: Laws, 1991, ch. 524, § 1, eff from and after January 1, 1992.

Cross References — Treatment of gain or loss from disposition of property generally, see § 27-7-9.

Deductions generally, see § 27-7-17.

Definition of "capital asset," see § 27-7-99.

Application of this section to definition of "net capital loss," see § 27-7-101.

Application of Internal Revenue Code to this section, see § 27-7-103.

RESEARCH REFERENCES

ALR. Gain to owner of mortgaged property, for income tax purposes, where property is sold on foreclosure and adjusted cost basis is less than mortgage debt. 3

A.L.R.2d 639.

Holding period for determination of gain or loss on sale of partner's interest in firm. 7 A.L.R.2d 672.

Market value of annuity as ascribable to agreement to pay a life annuity to another for purpose of determining capital gain or loss. 12 A.L.R.2d 589.

Initiation and termination of "holding period" in determining whether gain or loss on sale of stock or securities is entitled to capital gains or loss treatment. 7 A.L.R.3d 382.

Construction and application of § 1034 of Internal Revenue Code of 1954 (26 USC § 1034) concerning nonrecognition of gain or loss on sale or exchange of residential property. 5 A.L.R. Fed. 205.

Loss on sale of securities by corporate taxpayer as fully deductible trade or business expense under 26 USCS § 162(a), or uncompensated loss under 26 USCS § 165(a), or as partially deductible loss incurred on sale of capital asset under 26 USC § 165(f). 34 A.L.R. Fed. 699.

Modern view as to capital gains or ordinary income treatment of profit on sale of subdivided realty which is asserted to be "capital asset" under § 1221 of the Internal Revenue Code of 1954 (26 USCS § 1221). 45 A.L.R. Fed. 292.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 422 et seq. (deductions, generally), 457 et seq. (gain or loss on disposition or conversion of property).

CJS. 85 C.J.S., Taxation §§ 1998-2004.

§ 27-7-97. Capital loss carrybacks and carryovers.

(1) If a corporation has a net capital loss for any taxable year (hereinafter referred to as the "loss year"), the amount shall be:

(a) A capital loss carryback to each of the three (3) taxable years preceding the loss year;

(b) A capital loss carryover to each of the five (5) taxable years succeeding the loss year.

(2) If a corporation has a loss year, the amount shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which the loss may be carried, and the portion of the loss which shall be carried to each of the other taxable years to which the loss may be carried shall be the excess, if any, of the loss over the total of the capital gain net income for each of the prior taxable years to which the loss may be carried. For purposes of the preceding sentence, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter.

(3)(a) If a taxpayer other than a corporation has a net capital loss for any taxable year:

(i) The excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(ii) The excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(b) For purposes of determining the excess referred to in subsection (3)(a)(i) and (ii) of this section, there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of:

(i) The amount allowed for the taxable year under Section 27-7-95, subsection (2)(a) or (b), or

(ii) The adjusted taxable income for such taxable year.

(c) For purposes of subsection (3)(b) of this section, the term "adjusted taxable income" means taxable income increased by the sum of:

(i) The amount allowed for the taxable year under Section 27-7-95, subsection (2)(a) or (b), and

(ii) The deduction allowed for such year.

For the purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

SOURCES: Laws, 1991, ch. 524, § 2, eff from and after January 1, 1992.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (3)(b)(i) and (3)(c)(i) was corrected by substituting "Section 27-7-95, subsection (2)(a) or (b)" for "Section 1, subsection (2)(a) or (b)."

Cross References — Gain or loss on disposition of property, see § 27-7-9.

Definition of "capital asset", see § 27-7-99.

Definitions, see § 27-7-101.

Application of this section to definition of "net capital loss", see § 27-7-101.

Application of Internal Revenue Code to this section, see § 27-7-103.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 457 et seq. (gain or loss on disposition or conversion of property), 439 (deductions - losses), 492, 493 (carryback and carryover of net losses).

CJS. 85 C.J.S., Taxation §§ 1998-2004.

§ 27-7-99. "Capital asset" defined.

For purposes of Sections 27-7-95 through 27-7-103, the term "capital asset" means property held by the taxpayer, whether or not connected with his trade or business, but does not include the following:

(a) Stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(b) Property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in Section 27-7-17 or real property used in his trade or business;

(c) A copyright, a literary, a musical or artistic composition, a letter or memorandum or similar property held by:

(i) A taxpayer whose personal efforts created such property,

(ii) In the case of a letter, memorandum or similar property, a taxpayer for whom such property was prepared or produced, or

(iii) A taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in paragraph (c)(i) and (ii) of this section;

(d) Accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (a) of this section.

SOURCES: Laws, 1991, ch. 524, § 3, eff from and after January 1, 1992.

Editor's Note — Laws of 1991, ch. 524, § 18, effective from and after January 1, 1992, provides as follows:

"SECTION 18. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax or franchise tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax or franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Gain or loss on disposition of property, see § 27-7-9.

Other definitions relating to capital gains and losses, see § 27-7-101.

Application of Internal Revenue Code to this section, see § 27-7-103.

RESEARCH REFERENCES

ALR. What constitutes trade or business under Internal Revenue Code (U.S.C.S. Title 26). 161 A.L.R. Fed. 245.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 458 (what is a capital asset).

§ 27-7-101. Other definitions relating to capital gains and losses.

The definition of the terms "short-term capital gain," "short-term capital loss," "long-term capital gain," "long-term capital loss," "net short-term capital gain," "net short-term capital loss," "net long-term capital gain," "net long-term capital loss," "capital gain net income," "net capital loss," and "net capital gain" shall be the same as those terms are defined under the provisions of the Internal Revenue Code and the rules, regulations, rulings and determinations promulgated thereunder, unless such definitions are in conflict with other provisions of this chapter, in which case the provisions of this chapter shall control.

SOURCES: Laws, 1991, ch. 524, § 4, eff from and after January 1, 1992; Laws, 1998, ch. 543, § 3, eff from and after January 1, 1998.

Cross References — Gain or loss on disposition of property, see § 27-7-9.

Definition of "capital asset," see § 27-7-99.

Application of Internal Revenue Code to this section, see § 27-7-103.

§ 27-7-103. Applicability of provisions of Internal Revenue Code relating to capital losses.

All provisions of the Internal Revenue Code of 1986, as amended, in regard to limitations on capital losses, capital loss carrybacks and carryovers and holding periods of property shall be applicable to the provisions of Sections 27-7-95 through 27-7-101.

SOURCES: Laws, 1991, ch. 524, § 5, eff from and after January 1, 1992.

Cross References — Gain or loss on disposition of property, see § 27-7-9.

Definition of "capital asset", see § 27-7-99.

Federal Aspects — Capital gains or losses on disposition of property, see 26 USCS § 1001 et seq.

RESEARCH REFERENCES

Am Jur. 33 Am. Jur. 2d, Federal Taxation § 650.

71 Am. Jur. 2d, State and Local Taxation § 365 et seq. (provision in state law for conformity with federal law).

CJS. 85 C.J.S., Taxation §§ 1998-2004.

§ 27-7-105. Penalty on underpayment of taxes attributable to fraud.

(1) If any part of any underpayment of tax required to be shown on a return required by this chapter or if any underpayment is finally assessed due to failure to file a return required by this chapter is due to fraud, there shall be added to the tax an amount equal to seventy-five percent (75%) of the portion of the underpayment which is attributable to fraud.

(2) If the State Tax Commission establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes by a preponderance of the evidence is not attributable to fraud.

(3) In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of the spouse.

SOURCES: Laws, 1991, ch. 524, § 10, eff from and after January 1, 1992.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-3.

Assessment for underpayment of taxes, see § 27-7-51.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 512 et seq. (penalties, generally).

§ 27-7-107. Contribution to Mississippi Bicentennial Celebration Fund from state income tax refund [Repealed effective January 1, 2019].

(1) Each resident individual taxpayer who files a Mississippi income tax return and who will receive a tax refund from the State Tax Commission may designate that a contribution be made to the "Mississippi Bicentennial Celebration Fund" authorized in Section 39-31-1 by marking the appropriate box printed on the return pursuant to this subsection. In the case of a joint return, each spouse may designate that a portion of the refund shall be paid to such fund. The State Tax Commission shall print on the Mississippi income tax form for residents a space for designating the contribution in substantially the following form:

"MISSISSIPPI BICENTENNIAL CELEBRATION FUND"

I wish to contribute ( )$1 ( )5$ ( )$10 other $ ______ of my TAX REFUND TO THE MISSISSIPPI BICENTENNIAL CELEBRATION FUND."

(2) The State Tax Commission shall explain in the instructions accompanying the individual income tax form the purposes for which the contributions authorized herein shall be used.

(3) This section shall apply to taxable years beginning on or after January 1, 2009.

(4) The Chairman of the State Tax Commission shall determine annually the total amount designated by individuals to be paid to the fund, along with all interest earned thereon, and shall report such amount to the State Treasurer who shall pay such amount into the Mississippi Bicentennial Celebration Fund established in Section 39-31-1.

SOURCES: Laws, 2009, ch. 418, § 2, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 418, § 3, effective July 1, 2009, provides:

"SECTION 3. Sections 1 and 2 of this act shall stand repealed on January 1, 2019."

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

State Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning Commissioner of Revenue of the Department of Revenue, see § 27-7-3.

ARTICLE 3.

WITHHOLDING OF TAX.

SEC.
27-7-301. Citation of article.

27-7-303. Definitions.
27-7-305. Withholding of tax; leased employees.
27-7-307. Employer and certain persons owning stock of corporations or interest in limited liability companies with thirty-five or less owners liable for amounts required to be withheld; liability is derivative of the corporation or limited liability company.
27-7-308. Withholding by seller on gross proceeds realized by nonresident seller of real property; refund of excess withholding; filing of federal information returns with Department of Revenue.
27-7-309. Employer's return and payment of taxes withheld.
27-7-311. Annual withholding statement.
27-7-312. Certain withholding tax revenue to be deposited in Mississippi Advantage Jobs Incentive Payment Fund.
27-7-313. Refund to taxpayer.
27-7-315. Procedure where refund not made within six months; interest.
27-7-317. Refunds to employer for overpayment.
27-7-319. Declaration of estimated tax.
27-7-321. Repealed.
27-7-323. Amendment of declaration.
27-7-325. Joint declaration; husband and wife.
27-7-327. Underestimate of tax.
27-7-329. Payment of estimated tax.
27-7-331. Withholding tables; rules, regulations and forms.
27-7-333. Employer's withholding account number.
27-7-335. Employee required to furnish exemption certificate to employer.
27-7-337. Method of payment.
27-7-339. Withholding state income taxes of federal employees by federal agencies.
27-7-341. Administration.
27-7-343. Regulatory authority.
27-7-345. Civil penalties for failure to file return or deficiency in payment of tax.
27-7-347. Criminal penalties.
27-7-349. Article 3 supplemental to Article 1.

§ 27-7-301. Citation of article.

This article may be cited as the "Mississippi Income Tax Withholding Law of 1968."

SOURCES: Codes, 1942, § 9220-61; Laws, 1968, ch. 580, § 1, eff from and after January 1, 1969.

§ 27-7-303. Definitions.

As used in this article:

(a) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(b) "Commission," "State Tax Commission," "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(c) "Employee" means any individual subject to the provisions of Article 1 of this chapter, who performs or performed services for an employer as defined herein and receives wages therefor.

(d) "Employer" means a person doing business in, or deriving income from sources within, the state, who has control of the payment of wages to an individual for services performed, or a person who is the officer or agent of the person having control of the payment of wages.

(e) "Estimated tax" means the amount by which the tax liability of the taxpayer under Article 1 of this chapter can reasonably be expected to exceed the amount withheld from wages of the taxpayer pursuant to this article during the income year.

(f) "Income year" means the calendar or fiscal year upon the basis of which the net income of the taxpayer is computed under the provisions of Article 1 of this chapter; if no fiscal year has been established, it means the calendar year.

(g) "Payroll period" means a period for which a payment of wages is made to the employee by the employer.

(h) "Person" means and includes individuals, fiduciaries, corporations, partnerships, associations, the state and its political subdivisions, and the federal government, its agencies and instrumentalities.

(i) "Taxpayer" means and includes any individual, fiduciary, corporation or other legal entity subject to the tax imposed by the provisions of Article 1 of this chapter.

(j) "Wages" means remuneration in cash or any other form for services performed by an employee for an employer, except that it shall not include remuneration paid:

(i) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

(ii) For services performed by an employee in connection with farming activities; or

(iii) For services not in the course of the employer's trade or business performed by an employee in any calendar quarter; or

(iv) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry, or by a member of a religious order performing duties required by the order.

(k) "Transient employer" means an employer who is not a resident of this state and who temporarily engages in any activity within the state for the production of income. Without intending to exclude others who may come within the foregoing definition, any nonresident employer engaging in any such activity within the state which, as of any date, cannot be reasonably expected to continue for a period of eighteen (18) consecutive months, shall be deemed to be temporarily engaged in such activity.

(*l*) "Calendar quarter" means the period of three (3) consecutive months ending on March 31, June 30, September 30 or December 31.

SOURCES: Codes, 1942, § 9220-62; Laws, 1968, ch. 580, § 2; Laws, 1978, ch. 342, § 2; Laws, 2009, ch. 492, § 45, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Department of Revenue generally, see § 27-3-1 et seq.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

RESEARCH REFERENCES

ALR. What constitutes employer — employee relationship for purposes of federal income tax withholding. 51 A.L.R. Fed. 59.

What constitutes trade or business under Internal Revenue Code (U.S.C.S. Title 26). 161 A.L.R. Fed. 245.

§ 27-7-305. Withholding of tax; leased employees.

(1) Except as otherwise provided in this section, every employer making payments of wages to employees shall deduct and withhold from such wages an amount determined from withholding tables promulgated by the commissioner and furnished to the employer. The full amount deducted and withheld from any employee's wages during the income year shall be credited against the tax liability of the employee under the provisions of Article 1 of this chapter for that year. Any such tables promulgated by the commissioner shall not be designed to collect more than the amount of tax that the taxpayer can reasonably be expected to owe for the income year. Businesses that lease employees by a contract of employment with a leasing firm may be considered the employer for Mississippi withholding tax purposes. In such cases payments to the leasing company may be attached for such withholding taxes upon default by the leasing firm.

(2) Firms that lease employees to businesses are required to maintain separate ledgers of account for these employees. These lease firms shall furnish the Department of Revenue annually a summary of wages paid, number of employees and amounts withheld by location. In addition, the

commissioner shall require firms that lease employees to businesses to give a cash bond or an approved surety bond in an amount sufficient to cover twice the estimated tax liability for a period of three (3) months. This bond shall be filed with the commissioner prior to beginning business in this state. Failure to comply with this provision shall subject such person to the penalties provided by this chapter.

(3) An out-of-state business as defined in Section 27-113-5 shall not be subject to any employer tax withholdings for income that is not subject to income taxation under Sections 27-113-1 through 27-113-9.

SOURCES: Codes, 1942, § 9220-63; Laws, 1968, ch. 580, § 3; Laws, 1988, ch. 391, § 6; Laws, 2015, ch. 420, § 8, eff from and after passage (approved Mar. 29, 2015.)

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Refunds to employers for overpayments, see § 27-7-317.

Penalty for employer's failure to withhold tax, see § 27-7-347.

§ 27-7-307. Employer and certain persons owning stock of corporations or interest in limited liability companies with thirty-five or less owners liable for amounts required to be withheld; liability is derivative of the corporation or limited liability company.

(1) Every employer shall be liable for amounts required to be deducted and withheld by this article regardless of whether or not the amounts were in fact deducted and withheld, except that if the employer fails to deduct and withhold the required amounts and if the tax against which the required amounts would have been credited is paid, the employer shall not be liable for those amounts not deducted and withheld if such failure was due to reasonable cause.

(2) Persons owning stock of ten percent (10%) or more of the total of corporations or ten percent (10%) interest in limited liability companies with thirty-five (35) or less owners and exercising responsibilities for fiscal management of such corporation or limited liability company also shall be liable for amounts withheld or required to be withheld under this article, including interest and penalties thereon, when such amounts become due and unpaid to the extent that such amounts accrued while such person was exercising responsibilities for fiscal management. The liability under this subsection is derivative of the corporation or limited liability company, and the three-year assessment period provided in Section 27-7-49 will begin to run after the liability of the corporation or limited liability company becomes final. A person being assessed under this subsection may appeal his liability under Section 27-77-5 solely regarding the issue of the ownership interest and management requirements of this subsection. The commissioner shall make assessments against and effect collection from said persons pursuant to the provisions of

this article for the making of withholding tax determinations against employers.

SOURCES: Codes, 1942, § 9220-64; Laws, 1968, ch. 580, § 4; Laws, 1977, ch. 439, § 1; Laws, 1988, ch. 391, § 7; Laws, 1994, ch. 503, § 1; Laws, 1995, ch. 346, § 4; Laws, 2010, ch. 386, § 1, eff from and after July 1, 2010.

Cross References — Application of exception of this section to liability of employer for required sums not withheld and paid to commissioner, see § 27-7-309.

JUDICIAL DECISIONS

1. Responsible person.

Debtor was liable for tax debts of a company because debtor, a partner in the company, qualified as a responsible person under Mississippi law and both sales taxes and withholding taxes qualified as trust fund taxes that were nondischargeable. Watson v. Miss. Dep't of Revenue (In re Watson), 556 B.R. 757 (Bankr. S.D. Miss. 2016).

Debtor, a partner in a company, qualified as a responsible person under Mississippi law and was liable for the sales and withholding tax debts of the company because debtor had filed state withholding tax returns on behalf of the company and had taken over all of the day to day operations after his partner left. Watson v. Miss. Dep't of Revenue (In re Watson), 556 B.R. 757 (Bankr. S.D. Miss. 2016).

RESEARCH REFERENCES

ALR. Comment Note. — validity and construction of state statute making successor corporation liable for taxes of predecessor. 65 A.L.R.3d 1181.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 507 (assessment and collection; withholding).

CJS. 35A C.J.S., Federal Civil Procedure § 177.

§ 27-7-308. Withholding by seller on gross proceeds realized by nonresident seller of real property; refund of excess withholding; filing of federal information returns with Department of Revenue.

(1) In a sale of real property and associated tangible personal property which is not considered an exchange or trade of such property, and the sale results in gross proceeds greater than One Hundred Thousand Dollars ($100,000.00) paid by the buyer to the seller or sellers, and the property is owned by a nonresident, the seller shall withhold from the proceeds of the sale and pay to the Department of Revenue an amount equal to five percent (5%) of the amount realized by the seller on the sale. If the amount required to be paid to the Department of Revenue pursuant to this subsection exceeds the net proceeds payable to the seller, the seller shall pay to the department only the net proceeds otherwise payable to the seller. For purposes of this section a corporation registered to do business in the State of Mississippi shall be considered a resident of the state.

(2) The failure of the seller to pay to the Department of Revenue the amount provided for in subsection (1) of this section shall not impair or affect the title to such property, but the seller shall be personally liable to the Department of Revenue for any amounts required to be paid according to subsection (1) of this section and not paid to the department.

(3)(a) If the seller determines that the amount required to be paid pursuant to subsection (1) of this section will result in excess payment on any gain required to be recognized from the sale, the seller may provide the Department of Revenue an affidavit signed under penalties of perjury stating the amount of the gain required to be recognized from the sale, and the seller shall pay the applicable percentage of the amount of the gain required to be recognized, if any, stated in the affidavit rather than as provided in subsection (1) of this section.

(b) If the amount required to be paid pursuant to this subsection exceeds the net proceeds payable to the seller, the seller shall pay over to the department only the net proceeds otherwise payable to the seller.

(4) If a payment made pursuant to subsection (1) of this section results in an excess payment on any gain required to be recognized from the sale, the seller may file a claim for refund of the excess payment with the department that includes an affidavit signed by the seller under penalties of perjury stating the amount of the gain required to be recognized from the sale and the department shall refund the difference between the amount paid pursuant to subsection (1) of this section and the amount to be paid as provided in subsection (3) of this section.

(5) The seller shall be required to send to the Department of Revenue the information returns for real estate transactions as required by the Internal Revenue Code of 1986, as amended.

(6) A person licensed under Section 73-35-1 et seq. and/or a closing agent who is involved in the sale of property governed by this section shall:

(a) Have no duty to the buyer, seller or any other party to such sale regarding the applicability of, compliance with, violation or enforcement of this section; and

(b) Not be liable to any party to such sale or the State of Mississippi for any damages sustained or liability of another arising under this section.

SOURCES: Laws, 1991, ch. 524, § 15; Laws, 2015, ch. 456, § 1, eff from and after July 1, 2015.

§ 27-7-309. Employer's return and payment of taxes withheld.

(1)(a) Except as otherwise provided in this subsection, every employer required to deduct and withhold from wages under this article shall, for each calendar quarter, on or before the fifteenth day of the month following the close of such calendar quarter, file a withholding return as prescribed by the commissioner and pay over to the commissioner the full amount required to be deducted and withheld from wages by such employer for the calendar quarter. Provided that the commissioner may, by regulation, provide that every such employer shall, on or before the fifteenth day of each month, pay over to the commissioner or a depository designated by the commissioner, the amount required to be deducted and withheld by such employer for the preceding month, if such amount is One Hundred Dollars ($100.00) or more. Returns and payments placed in the mail must be postmarked by the due date in order to be timely filed, except when the due date falls on a weekend or holiday, returns and payments placed in the mail must be postmarked by the first working day following the due date in order to be considered timely filed.

(b) An employer having an average monthly withholding tax liability of at least Fifty Thousand Dollars ($50,000.00) for the preceding calendar year shall pay to the Department of Revenue on or before June 25, 2014, and on or before the twenty-fifth day of June of each succeeding year thereafter, an amount equal to at least seventy-five percent (75%) of such employer's estimated withholding tax liability for the month of June of the current taxable year, or an amount equal to at least seventy-five percent (75%) of the employer's withholding tax liability for the month of June of the preceding taxable year. Payments required to be made under this paragraph must be received by the Department of Revenue no later than June 25 in order to be considered timely made. An employer that fails to comply with the requirements of this paragraph may be assessed a penalty in an amount equal to ten percent (10%) of the difference between any amount the taxpayer pays pursuant to this paragraph and the employer's actual withholding tax liability for the month of June for which the estimated payment was required to be made. This paragraph shall not apply to any agency, department or instrumentality of the United States, any agency, department, institution, instrumentality or political subdivision of the State of Mississippi, or any agency, department, institution or instrumentality of any political subdivision of the State of Mississippi. Payments made pursuant to this paragraph for the month of June, less One Hundred Thousand Dollars ($100,000.00) thereof to be retained by the Department of Revenue each year to defray the costs of collection, shall be deposited by the Department of Revenue into the State General Fund.

(c) The commissioner may promulgate rules and regulations to require or permit filing periods of any duration, in lieu of monthly or quarterly filing periods, for any taxpayer or group thereof.

(2) Notwithstanding any of the other provisions of this section, all transient employers and all employers engaged in any business which is seasonal shall make return and pay over to the commissioner on a monthly basis, the full amounts required to be deducted and withheld from the wages by such employer for the calendar month. Such returns and payments to the commissioner by such employers shall be made on or before the fifteenth day of the month following the month for which such amounts were deducted and withheld from the wages of his employees. The commissioner shall have the authority to issue reasonable rules and regulations designating or classifying those transient and seasonal employers.

(3) If the commissioner, in any case, has justifiable reason to believe that the collection of funds required to be withheld by any employer as provided herein is in jeopardy, he may require the employer to file a return and pay such amount required to be withheld at any time.

(4) Every employer who fails to withhold or pay to the commissioner any sums required by this article to be withheld and paid, shall be personally and individually liable therefor, except as provided in Section 27-7-307; and any sum or sums withheld in accordance with the provisions of this article shall be deemed to be held in trust for the State of Mississippi and shall be recorded by the employer in a ledger account so as to clearly indicate the amount of tax withheld and that the amount is the property of the State of Mississippi.

(5) Once an employer has become liable to a quarterly return of withholding, he must continue to file a quarterly report, even though no tax has been withheld, until such time as he notifies the commissioner, in writing, that he no longer has employees or that he is no longer liable for such quarterly returns.

(6) Once an employer has become liable to a monthly return of withholding, he must continue to file a monthly report, even though no tax has been withheld until such time as he notifies the commissioner, in writing, that he no longer has employees or that he is no longer liable for such monthly returns.

(7) Magnetic media reporting may be required in a manner to be determined by the commissioner.

SOURCES: Codes, 1942, § 9220-65; Laws, 1968, ch. 580, § 5; Laws, 1982, ch. 489, § 4; Laws, 1988, ch. 391, § 8; Laws, 1995, ch. 549, § 1; Laws, 1998, ch. 412, § 1; Laws, 2002, ch. 539, § 1; Laws, 2005, ch. 330, § 1; Laws, 2007, ch. 536, § 1; Laws, 2008, ch. 507, § 9; Laws, 2009, ch. 563, § 7; Laws, 2010, ch. 562, § 7; Laws, 2012, ch. 547, § 3, eff from and after July 1, 2012.

Editor's Note — Laws of 2007, ch. 536, § 4, as amended by Laws of 2008, ch. 507, 12, provides:

"SECTION 4. This act shall take effect and be in force from and after July 1, 2009."

Laws of 2008, ch. 507, § 1, effective April 29, 2008, provides:

"SECTION 1. This act shall be known and may be cited as the "Budget Reconciliation Act of 2008."

Cross References — Transfer of powers, duties and functions of State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

Refund to employer for overpayment, see § 27-7-317.

Penalty for employer's failure to remit withholding tax, see § 27-7-347.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 507 (withholding).

§ 27-7-311. Annual withholding statement.

Every employer shall file an annual statement of withholding for each employee. The annual statement shall be in the form prescribed by the commissioner and shall be filed with the commissioner and two copies thereof furnished the employee on or before the thirty-first day of January following the close of the calendar year. Provided, if the employment of the employee is terminated during the calendar year, the employer shall furnish such statement to the employee at the time of the termination of employment. Such statement shall show:

(1) The name and withholding account number of the employer;

(2) The name of the employee and his social security account number;

(3) The total compensation paid to the employee; and

(4) The total amount withheld by the employer pursuant to this article for the year or part of a calendar year where the employee worked for less than a full calendar year, and such other information as the commissioner shall require by rule or regulation.

SOURCES: Codes, 1942, § 9220-67; Laws, 1968, ch. 580, § 7, eff from and after January 1, 1969.

Cross References — Taxation of annuity contracts under optional retirement program for employees of state institutions of higher learning, see § 25-11-419.

Attaching copy of withholding statement to return in order to obtain refund, see § 27-7-313.

Penalty for failure to file annual statement, see § 27-7-347.

§ 27-7-312. Certain withholding tax revenue to be deposited in Mississippi Advantage Jobs Incentive Payment Fund.

(1) Of the revenue collected under the provisions of this article from the new direct jobs of a qualified business or industry as defined in Section 57-62-5 of the Mississippi Advantage Jobs Act, an amount equal to the estimated amount of the quarterly incentive payment for which such qualified business or industry is eligible shall be deposited into the Mississippi Advantage Jobs Incentive Payment Fund created pursuant to Section 57-62-1 et seq., on or before the twentieth day of the month following the close of each calendar quarter.

(2) Of the revenue collected under the provisions of this article from the qualified jobs of a qualified business or industry as defined in Section 57-99-1, an amount equal to the estimated amount of the quarterly incentive payment for which such qualified business or industry is eligible shall be deposited into the MMEIA Withholding Rebate Fund created pursuant to Section 57-99-5, on or before the twentieth day of the month following the close of each calendar quarter.

(3) Of the revenue collected under the provisions of this article from the qualified jobs of a qualified business or industry as defined in Section 57-100-1, an amount equal to the estimated amount of the quarterly incentive payment

for which such qualified business or industry is eligible shall be deposited into the Existing Industry Withholding Rebate Fund created pursuant to Section 57-100-5, on or before the twentieth day of the month following the close of each calendar quarter.

(4) Of the revenue collected under the provisions of this article from the qualified jobs of a qualified business or industry as defined in Section 57-99-21, an amount equal to the estimated amount of the quarterly incentive payment for which such qualified business or industry is eligible shall be deposited into the MMEIA Rebate Fund created pursuant to Section 57-99-25, on or before the twentieth day of the month following the close of each calendar quarter.

SOURCES: Laws, 2000, 2nd Ex Sess, ch. 1, § 33; Laws, 2002, 1st Ex. Sess., ch. 2, § 4; Laws, 2007, ch. 303, § 22; Laws, 2009, ch. 302, § 9; Laws, 2009, ch. 557, § 21, eff from and after passage (approved Apr. 17, 2009.)

Joint Legislative Committee Note — Section 9 of ch. 302, Laws of 2009, effective from and after passage (approved February 3, 2009), amended this section. Section 21 of ch. 557, Laws of 2009, effective from and after passage (approved April 17, 2009), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 13, 2009, meeting of the Committee.

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1, effective August 30, 2000, provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Laws of 2000, 2nd Ex Sess, ch. 1, § 24, effective August 30, 2000, provides:

"SECTION 24. This chapter shall be known and may be cited as the 'Mississippi Advantage Jobs Act.'"

Cross References — Mississippi Advantage Jobs Act, see § 57-62-1 et seq.

Mississippi Advantage Jobs Incentive Payment Fund, see § 57-62-11.

Mississippi Major Economic Impact Authority generally, see § 57-75-1 et seq.

§ 27-7-313. Refund to taxpayer.

In the case of any overpayment of any tax, interest or penalty levied or provided for in Article 1 of this chapter, or in this article, whether by reason of excessive withholding, error on the part of the taxpayer, erroneous assessment of tax, or otherwise, the excess shall be refunded to the taxpayer.

When, upon examination of any return made under this article, or under the provisions of Article 1 of this chapter, it appears that an amount of income tax has been paid in excess of the amount properly due, then the amount of the excess shall be credited against any income tax then due from the taxpayer under any other return required by this article, or Article 1 of this chapter. Refunds or credits may be withheld or applied against any other tax determined finally to be due if the taxpayer has failed to pay any tax finally due as required by the provisions of the laws administered by the department. Any excess after such application shall be certified to the State Auditor of Public Accounts by the commissioner. The Auditor is hereby authorized to make any investigation and audit of the claim as he finds necessary. If he finds that the commissioner is correct in his determination, the Auditor may issue his warrant to the State Treasurer in favor of the taxpayer for the amount of tax erroneously paid into the State Treasury. No refund shall be granted under this article or under the provisions of Article 1 of this chapter unless a claim for the refund is made within three (3) years from the date the return is due, or within three (3) years from the final day of an extension period previously granted by the commissioner pursuant to the provisions of Section 27-7-50; however, the restrictions imposed by this section do not apply to those refund requests or claims made in compliance with Section 27-7-49.

The State Treasurer shall withhold from all income taxes collected each month an amount necessary to make refunds expected to be approved by the State Auditor during the following month. This amount shall be placed in a special fund, separate and apart from the General Fund of the state, and used for the purpose of making refunds under the income tax laws of the state. All refunds made under this article shall be made as quickly as possible upon receipt of the proper proof, as required by the State Auditor.

In order to obtain a refund, an employee shall attach to his return a copy of the withholding statement required to be furnished him by his employer as provided in Section 27-7-311. The making of any refund shall not be conclusive of the tax due by any individual, but shall be made subject to the future audit of his return and the determination of his liability. Bond requirements of Section 7-7-57 shall not apply to warrants for refund of income tax.

SOURCES: Codes, 1942, § 9220-68; Laws, 1968, ch. 580, § 8; Laws, 1971, ch. 512, § 8; Laws, 1975, ch. 449, § 1; Laws, 1982, ch. 489, § 5; Laws, 1986, ch. 393, § 6; Laws, 1988, ch. 391, § 9; Laws, 1989, ch. 485, § 7; Laws, 1990, ch. 523, § 7; Laws, 2013, ch. 470, § 4, eff from and after Jan. 1, 2013.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1988, ch. 391, § 10, provides as follows:

"SECTION 10. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax or corporation franchise tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the income tax and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1990, ch. 523, § 8, effective from and after January 1, 1990, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective.

Cross References — Investment of fund for payment of income tax refunds, see § 7-9-27.

Limitation of time for refund after determination of income tax liability by Internal Revenue Service, see § 27-7-49.

Taxpayer's remedy if refund is not made within 6 months following filing deadline, see § 27-7-315.

Refund of taxes, generally, see § 27-73-1 et seq.

JUDICIAL DECISIONS

1. In general.

Federal retirees who were state residents were entitled to refunds of state income taxes paid under the state's unconstitutional tax scheme which taxed federal retirees while exempting the state's own retired employees. Marx v. Broom, 632 So. 2d 1315 (Miss. 1994).

The plain language of § 27-7-313 states that any overpayment of Mississippi taxes for any reason shall be refunded to the taxpayer; thus, § 27-7-313 provided for refunds of state income taxes to federal retirees who paid taxes under the state's unconstitutional tax scheme which taxed federal retirees while exempting the state's retired employees. Marx v. Broom, 632 So. 2d 1315 (Miss. 1994).

The 1990 amendment to § 27-7-313 stripped federal retirees of the right to file for a refund of income taxes paid under the state's unconstitutional tax scheme, which taxed federal retirees while exempting the state's retired employees, without providing them any means of protecting those rights, and thus violated the retirees' constitutional right to due process; moreover, the amendment was unconstitutionally discriminatory because the only persons affected were former federal employees as opposed to state or private sector employees. Marx v. Broom, 632 So. 2d 1315 (Miss. 1994).

The 1990 amendment to § 27-7-313, which denied refunds but attempted to provide credit against future income tax liabilities as a remedy for the illegal taxation of federal retirees who paid income taxes under the state's unconstitutional tax scheme which taxed federal retirees while exempting the state's retired employees, was deficient in providing a "clear and certain" remedy to federal retirees who paid the unconstitutional income taxes, since the amendment made no provision for federal retirees who would have no future state tax liability as a result of death, moving outside the state, or having insufficient taxable income to warrant taxes. Marx v. Broom, 632 So. 2d 1315 (Miss. 1994).

Section 27-7-313 does not require that a tax payment be made under protest in order for the taxpayer to get a refund of wrongfully assessed taxes. Marx v. Broom, 632 So. 2d 1315 (Miss. 1994).

ATTORNEY GENERAL OPINIONS

If person's claim for refund has been barred by passage of three year period described in Section 27-7-313 or 27-73-5, then Section 97 of Mississippi Constitution prohibits legislature from reviving such persons' right to claim refund. Reynolds/Clark, March 30, 1994, A.G. Op. #94-0182.

RESEARCH REFERENCES

ALR. What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.S. § 6511(a)) for refund of tax overpayments. 160 A.L.R. Fed. 137.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 515 et seq. (refunds, generally).

CJS. 85 C.J.S., Taxation §§ 2055, 2056.

§ 27-7-315. Procedure where refund not made within six months; interest.

(1) If any overpayment of any tax, interest or penalty levied or provided for by Article 1 of this chapter, or in this article, is not refunded to the taxpayer as provided in Section 27-7-313 within six (6) months after the final date for filing returns as prescribed by law, the taxpayer may treat the failure to refund as a denial of a refund claim and appeal in the manner provided for in Section 27-77-5. A taxpayer's failure to file an appeal based on this deemed denial shall not prejudice or otherwise jeopardize the taxpayer's right to file an appeal upon a subsequent formal denial in the manner provided for in Section 27-77-5.

(2) If any overpayment of tax as reflected on a return, amended return or any other form of claim for refund or determined to be due by the commissioner or department when no overpayment is shown on a return, amended return or other form of claim for refund, is not refunded within ninety (90) days after (a) the prescribed due date of the return, (b) the date the return is filed, (c) the date a claim for refund is filed, or (d) the date the commissioner, the Board of Tax Appeals or court determines a refund as being due when no overpayment is shown on a return, amended return or other form of claim for refund, whichever is later, interest at the rate of one percent (1%) per month, except as otherwise provided in this section, shall be allowed on the overpayment computed for the period after expiration of the ninety-day period provided in this subsection to the date of payment. For any overpayment reflected on a return or amended return filed on or after January 1, 2015, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2015, where no overpayment is

shown on a return or amended return, the rate of interest allowed on the overpayment shall be:

(a) Nine-tenths of one percent (9/10 of 1%) per month for any overpayment reflected on a return or amended return filed on or after January 1, 2015, and before January 1, 2016, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2015, and before January 1, 2016, where no overpayment is shown on a return or amended return;

(b) Eight-tenths of one percent (8/10 of 1%) per month for any overpayment reflected on a return or amended return filed on or after January 1, 2016, and before January 1, 2017, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2016, and before January 1, 2017, where no overpayment is shown on a return or amended return;

(c) Seven-tenths of one percent (7/10 of 1%) per month for any overpayment reflected on a return or amended return filed on or after January 1, 2017, and before January 1, 2018, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2017, and before January 1, 2018, where no overpayment is shown on a return or amended return;

(d) Six-tenths of one percent (6/10 of 1%) per month for any overpayment reflected on a return or amended return filed on or after January 1, 2018, and before January 1, 2019, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2018, and before January 1, 2019, where no overpayment is shown on a return or amended return;

(e) One-half of one percent (½ of 1%) per month for any overpayment reflected on a return or amended return filed on or after January 1, 2019, or any overpayment based on a determination of refund by the commissioner, the Board of Tax Appeals or court on or after January 1, 2019, where no overpayment is shown on a return or amended return.

SOURCES: Codes, 1942, § 9220-69; Laws, 1968, ch. 580, § 9; Laws, 1979, ch. 427, § 7; Laws, 1982, ch. 489, § 6; Laws, 1998, ch. 337, § 1; Laws, 2005, ch. 499, § 16; Laws, 2014, ch. 476, § 6, eff from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides: "SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Board of Tax Appeals generally, see § 27-4-1 et seq.

Application of this section for purposes of computing interest due on the amount of overpayment of income tax, see § 27-7-51.

Refund of taxes, generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 515 et seq. (refunds, generally).

§ 27-7-317. Refunds to employer for overpayment.

(1) Any employer who makes an overpayment of the tax required to be remitted to the commissioner by Section 27-7-309 may file application with the commissioner, on a form prescribed by the commissioner, to have the amount of the overpayment refunded to him or to have the amount credited against the payment which he is required to make for a subsequent quarterly period, but the refund or credit shall be allowed only to the extent that the amount of the overpayment was not withheld under Section 27-7-305 by the employer.

(2) If the commissioner shall determine that the employer is not entitled to the refund or credit as applied for, he shall so notify the employer of the denial of the refund claim.

(3) Unless written application for refund or credit is received by the commissioner from the employer within three (3) years from the date the overpayment was made, no refund or credit shall be allowed.

SOURCES: Codes, 1942, § 9220-70; Laws, 1968, ch. 580, § 10; Laws, 2005, ch. 499, § 17, eff from and after July 1, 2005.

Cross References — Refund of taxes, generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation §§ 2055, 2056.

§ 27-7-319. Declaration of estimated tax.

Every individual taxpayer subject to the tax levied by the provisions of Article 1 of this chapter shall make and file with the commissioner estimated tax returns and payments for the income year, if such taxpayer does not have at least eighty percent (80%) of his tax liability withheld through wages subject to withholding and such liability exceeds Two Hundred Dollars ($200.00).

Except as otherwise provided in Section 57-10-409, every corporate taxpayer subject to the tax levied by the provisions of Article 1 of this chapter shall make and file with the commissioner estimated tax returns and payments for any income year ending after December 31, 1983, in an amount not less than ninety percent (90%) of the tax liability if such liability exceeds Two Hundred Dollars ($200.00).

SOURCES: Codes, 1942, § 9220-71; Laws, 1968, ch. 580, § 11; Laws, 1983, 2d Ex Sess, ch. 6, § 1; Laws, 1993, ch. 341, § 1; Laws, 1993, ch. 565, § 25, eff from and after July 1, 1993.

Cross References — Provision that the tax amnesty program shall not be available with respect to estimated tax payments required to be made under this section, see § 27-3-79.

Penalty relating to declaration of estimated tax, see § 27-7-347.

Approved company making financing agreement with respect to economic development project as exempt from obligation to make estimated tax payments under this section, see § 57-10-409.

§ 27-7-321. Repealed.

Repealed by Laws, 1983, 2nd Ex Sess, ch. 6, § 11, eff from and after January 1, 1984.

[Codes 1942, § 9220-72; Laws, 1968, ch. 580, § 12]

Editor's Note — Former § 27-7-321 prescribed the form for the declaration of estimated tax, and the time for filing.

§ 27-7-323. Amendment of declaration.

A taxpayer may file amendments to a declaration at such time, under such rules and regulations and in such form as the commissioner shall prescribe.

SOURCES: Codes, 1942, § 9220-73; Laws, 1968, ch. 580, § 13, eff from and after January 1, 1969.

Cross References — Penalty relating to declaration of estimated tax, see § 27-7-347.

§ 27-7-325. Joint declaration; husband and wife.

A single declaration may be filed jointly by a husband and wife having the same income year. If a joint declaration is filed by a husband and wife and they do not file a joint return for the income year, the estimated tax paid under the joint declaration may be treated as the estimated tax of either the husband or wife or may be divided between them at the election of the taxpayers. If the taxpayers fail to agree upon a division or application of the estimated tax paid, then the commissioner shall divide the estimated tax paid between the husband and wife or apply the estimated tax paid to the tax due by either the husband or wife.

SOURCES: Codes, 1942, § 9220-74; Laws, 1968, ch. 580, § 14, eff from and after January 1, 1969.

Cross References — Penalty relating to declaration of estimated tax, see § 27-7-347.

§ 27-7-327. Underestimate of tax.

Taxpayers subject to the requirements of estimated tax payments for an income year ending after December 31, 1983, shall estimate an amount not less than eighty percent (80%) of the tax actually due in the case of an individual or, except as otherwise provided in Section 27-7-329(f), an amount not less than ninety percent (90%) of the tax actually due in the case of a corporation. Any corporate taxpayer which either fails to file the required estimated tax returns and pay the tax within the time prescribed, or, except as otherwise provided in Section 27-7-329(f), which underestimates the required amount of the estimated tax shall be liable for a penalty in the amount of ten percent (10%) of the amount unpaid plus interest at the rate of one percent (1%) per month on such amount, except as otherwise provided in this section. Any individual taxpayer who either fails to file the required estimated tax returns and pay the tax within the time prescribed, or who underestimates the required amount of the estimated tax shall be liable for interest at the rate of one percent (1%) per month on such amount, except as otherwise provided in this section. For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(a) Nine-tenths of one percent (9⁄10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(b) Eight-tenths of one percent (8⁄10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(c) Seven-tenths of one percent (7⁄10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(d) Six-tenths of one percent (6⁄10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(e) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

SOURCES: Codes, 1942, § 9220-75, Laws, 1968, ch. 580, § 15; Laws, 1983, 2nd Ex Sess, ch. 6 § 2; Laws, 1993, ch. 341, § 2; Laws, 2014, ch. 476, § 7, eff from and after January 1, 2015.

Editor's Note — Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides: "SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Penalty relating to declaration of estimated tax, see § 27-7-347.

§ 27-7-329. Payment of estimated tax.

The estimated tax payment shall be made on such forms as the commissioner may prescribe and shall be paid as follows:

(a) The total estimated tax may be paid on or before the fifteenth day of the fourth month of the income year of the taxpayer; provided, individuals whose gross income from farming or fishing for the income year can reasonably be expected to amount to at least two-thirds (⅔) of the total gross income from all sources for the income year, may file and pay the estimated tax on or before the fifteenth day of the first month after the close of the income year; however, if such taxpayer files a completed income tax return on or before the first day of the third month following the close of the income year and pays the tax shown to be due thereon, it shall not be necessary to file or pay any estimated income tax.

(b) At the election of the taxpayer, individuals may pay the tax in equal installments of one-fourth (¼) on or before the fifteenth day of the fourth month of the income year, one-fourth (¼) or before the fifteenth day of the sixth month of the income year, one-fourth (¼) on or before the fifteenth day of the ninth month of the income year, and one-fourth (¼) on or before the fifteenth day of the first month after the close of the income year. Corporations may elect to pay the tax in installments of one-fourth (¼) on or before the fifteenth day of the fourth month of the income year, one-fourth (¼) on or before the fifteenth day of the sixth month of the income year, one-fourth (¼) on or before the fifteenth day of the ninth month of the income year, and one-fourth (¼) on or before the fifteenth day of the twelfth month of the income year.

(c) In the case of a taxpayer who makes an amendment to the tax estimate, the tax payments due after such amendment shall be adjusted either up or down to conform to the amended estimate of tax.

(d) In the case of a taxpayer who first meets the requirements subsequent to the fifteenth day of the fourth month of the income year, and not later than the fifteenth day of the ninth month of the income year the estimated tax may be paid in equal installments with the first installment being due at the time the taxpayer first meets the requirements and an installment being due on each subsequent regular tax payment date for the income year as prescribed in paragraph (b) of this section. If the taxpayer meets the requirements subsequent to the fifteenth day of the ninth month of the income year, the estimated tax shall be paid in full at that time.

(e) Any tax payment due under the provisions of this article may be paid by the taxpayer in advance of the date prescribed herein for the payment thereof.

(f) In the case of a corporate taxpayer, acting in good faith, that is paying its estimated tax in accordance with paragraph (b) of this section and that is unable to calculate with certainty the amount of estimated tax payable as the installment due on the fifteenth day of the twelfth month of the income year, the commission may allow the taxpayer to pay as its total estimated taxes an amount less than ninety percent (90%) of the tax liability; however, this provision shall not affect the amount of the tax liability that will be due on income for that year or the penalties which may be imposed for failure to file estimated tax returns and for underestimates that occur regarding installments due at any time other than the fifteenth day of the twelfth month of the income year.

SOURCES: Codes, 1942, § 9220-76; Laws, 1968, ch. 580, § 16; Laws, 1983, 2nd Ex Sess, ch. 6, § 3; Laws, 1993, ch. 341, § 3, eff from and after January 1, 1993.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in subsection (d) was corrected by substituting "paragraph (b) of this section" for "subsection (b) of this section."

Cross References — Subsection (f) of this section as providing exemption to requirement that corporate taxpayer estimate 90% of tax due and to imposition of penalty for underestimate thereof, see § 27-7-327.

§ 27-7-331. Withholding tables; rules, regulations and forms.

The commissioner shall prepare and furnish to employers state income tax withholding tables based on the current income tax laws of the state, taking into consideration the various deductions and personal exemptions allowed therein. Such tables shall be designed to provide for a yearly aggregate withholding that will approximate the state income tax liability of the average taxpayer, with the standard deductions and personal exemptions. The commissioner shall also make and prescribe such other rules, regulations and forms as he shall deem necessary or desirable for carrying out the purposes of this article. Any such tables promulgated by the commissioner shall not be designed to collect more than the amount of tax that the taxpayer can reasonably be expected to owe for the income year.

SOURCES: Codes, 1942, § 9220-77; Laws, 1968, ch. 580, § 17, eff from and after January 1, 1969.

§ 27-7-333. Employer's withholding account number.

Except as otherwise provided in this section, every employer, as defined herein, shall, on or before January 1, 1969, make application to the commissioner for and be assigned an employer's withholding account number. The account number assigned to an employee shall be used by such employer on all returns, reports and inquiries addressed to the commissioner.

This section shall not apply to an "out-of-state business" during a "disaster response period" as such terms are defined in Section 27-113-5.

SOURCES: Codes, 1942, § 9220-78; Laws, 1968, ch. 580, § 18; Laws, 2015, ch. 420, § 9, eff from and after passage (approved Mar. 29, 2015.)

§ 27-7-335. Employee required to furnish exemption certificate to employer.

Every employee whose wages are subject to the withholding provisions of this article shall, on or before January 1, 1969, furnish his or her employer with a certificate showing the exemption claimed by such employee for purposes of withholding. If any employee shall fail or refuse to furnish his or her employer such certificate, the employer shall withhold from the wages of such employee as if such employee claimed no exemption either for himself or herself. The furnishing of such information shall be in the form required by the commissioner.

SOURCES: Codes, 1942, § 9220-79; Laws, 1968, ch. 580, § 19, eff from and after January 1, 1969.

§ 27-7-337. Method of payment.

All taxes due under the provisions of this article shall be paid, on or before the date fixed by law for filing returns. Any such taxes may be paid with uncertified check during such time and under such regulations the commissioner shall prescribe, but, if a check received in payment of such taxes is not paid by the bank on which it is drawn, the taxpayer by whom such check is tendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check had not been tendered.

SOURCES: Codes, 1942, § 9220-81; Laws, 1968, ch. 580, § 21, eff from and after January 1, 1969.

§ 27-7-339. Withholding state income taxes of federal employees by federal agencies.

The commissioner is hereby authorized and directed to enter into an agreement with the secretary of the treasury of the United States, with respect to withholding of income tax as provided by this article, pursuant to an Act of Congress, 80 Stat. 478; Pub. Law 89-554; 5 U.S.C.S. Revised, Section 5517, September 6, 1966, and Executive Order No. 10407, 17 F. R. 10132, November 7, 1952.

SOURCES: Codes, 1942, § 9220-82; Laws, 1968, ch. 580, § 22, eff from and after January 1, 1969.

§ 27-7-341. Administration.

(1) The commissioner shall have exclusive jurisdiction and be charged with the administration and enforcement of the provisions of this article, except as otherwise provided.

(2) The commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, is hereby authorized, by any agent designated by the commissioner for that purpose, to examine any books, papers, records, or memoranda, bearing upon the matter required to be included in the return, and may require the attendance of persons rendering a return or of any officer or employee of such person, or of any person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(3) If any person summoned to appear under this article to testify, or produce books, papers or other data, shall refuse to do so, the chancery court for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

SOURCES: Codes, 1942, § 9220-83; Laws, 1968, ch. 580, § 23, eff from and after January 1, 1969.

§ 27-7-343. Regulatory authority.

(1) The commissioner, with the approval of the governor, may, from time to time, make such rules and regulations, not inconsistent with this article, as he may deem necessary to enforce its provisions.

(2) The commissioner is herewith authorized to promulgate such rules and regulations, prescribe such forms, purchase such equipment and supplies, employ personnel, and to do such other acts as he shall deem necessary in order that the withholding system herein established may be effectively initiated on January 1, 1969.

SOURCES: Codes, 1942, § 9220-84; Laws, 1968, ch. 580, § 24, eff from and after passage (approved July 29, 1968).

§ 27-7-345. Civil penalties for failure to file return or deficiency in payment of tax.

Any taxpayer who either fails to file a required return within the time prescribed, or who fails to remit the tax or remits less than the amount due under the return, shall be liable for the following penalties:

(a)(i) If the failure to file a return within the time prescribed, or the failure to pay the tax or any part thereof, was not the result of any fraudulent intent, the taxpayer shall be liable for a penalty in the amount of ten percent (10%) of the total amount of deficiency or delinquency in the tax, plus interest on the amount of tax due at the rate of one percent (1%) per month, except as otherwise provided in this paragraph (a), on the amount not paid, from the date such tax was due until paid, and such amount shall be added to the liability of the taxpayer unless such failure was due to reasonable cause.

(ii) For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

1. Nine-tenths of one percent (9⁄10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;
2. Eight-tenths of one percent (8⁄10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;
3. Seven-tenths of one percent (7⁄10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;
4. Six-tenths of one percent (6⁄10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and
5. One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

(b) If the failure to file the return or to remit the tax or any part thereof was the result of a fraudulent intent to evade the payment to the commissioner, the taxpayer, in addition to the criminal penalty provided in Section 27-7-347, shall be liable for a penalty of fifty percent (50%) of the tax due, plus interest on the amount of tax due at the rate of one percent (1%) per month on the amount not paid.

(c) If the failure to file an information return or to furnish a required statement within the time prescribed was not the result of any fraudulent intent, the taxpayer shall be liable for a penalty of Five Dollars ($5.00) per statement, with a minimum of Two Hundred Fifty Dollars ($250.00) up to a maximum of Ten Thousand Dollars ($10,000.00) per reporting account.

(d) If the failure to file an information return or to furnish a required statement was the result of intentional disregard of filing requirements, the taxpayer shall be liable for a penalty of Twenty-five Dollars ($25.00) per statement, with a minimum of Two Hundred Fifty Dollars ($250.00) up to a maximum of Fifty Thousand Dollars ($50,000.00) per reporting account.

SOURCES: Codes, 1942, § 9220-66; Laws, 1968, ch. 580, § 6; Laws, 1982, ch. 489, § 7; Laws, 1989, ch. 485, § 9; Laws, 1995, ch. 346, § 5; Laws, 2012, ch. 566, § 6; Laws, 2014, ch. 476, § 8, eff from and after January 1, 2015.

Editor's Note — Laws of 2012, ch. 566, § 10, effective May 23, 2012, provide:

"SECTION 10. Sections 8 and 9 of this act shall take effect and be in force from and after its passage, and the remaining sections of this act shall take effect and be in force from and after July 1, 2012.

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Cross References — Application of this section to a failure to comply with the withholding, accounting and reporting requirements applicable to leased employees, see § 27-7-305.

RESEARCH REFERENCES

ALR. Application of payments, made in satisfaction of employer's withholding tax liability, to employer's liability for penalties. 59 A.L.R. Fed. 484.

Construction and application of 26 U.S.C.S. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income from joint tax return to obtain innocent spouse exemption from liability for tax. 161 A.L.R. Fed. 373.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 433 (interest on delinquent taxes), 512 et seq. (penalties, generally).

72 Am. Jur. 2d, State and Local Taxation, §§ 738-751 (penalties, interest and costs).

§ 27-7-347. Criminal penalties.

(1) Willful failure to withhold tax or to remit tax to commissioner. Any employer required by Section 27-7-305 to deduct and withhold from wages of employees for the payment of state income taxes who shall willfully fail to deduct and withhold the required amounts from the wages of any employee for any payroll period, or who shall willfully fail to remit the same to the

commissioner within the time prescribed by Section 27-7-309, shall, in addition to being liable for such amount, be guilty of a misdemeanor, and, upon conviction therefor, shall be fined not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00), or imprisoned for not more than six (6) months, or both so fined and imprisoned.

(2) Any person required by this article to file a declaration of estimated tax who shall willfully fail to file the same within the time required by this article, or who shall willfully give any false information in such declaration shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than Twenty-five Dollars ($25.00), nor more than One Hundred Dollars ($100.00).

(3) Any employer who shall willfully fail to furnish an annual withholding statement to the commissioner or to any employee as required in Section 27-7-311 shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than Twenty-five Dollars ($25.00), nor more than Two Hundred Fifty Dollars ($250.00), or imprisoned not less than ten (10) days, nor more than ninety (90) days, or both so fined and imprisoned.

SOURCES: Codes, 1942, § 9220-80; Laws, 1968, ch. 580, § 20, eff from and after January 1, 1969.

Cross References — Application of this section to a failure to comply with the withholding, accounting and reporting requirements applicable to leased employees, see § 27-7-305.

Civil penalties for failure of employer to file return or for deficiency in payment of tax due, see § 27-7-345.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Necessity of proof of intent for conviction of offense with respect to collected taxes, under 26 USCS § 7215. 58 A.L.R. Fed. 220.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation 766 (criminal sanctions).

13 Am. Jur. Trials, Defending Federal Tax Evasions, § 1 et seq.

CJS. 85 C.J.S., Taxation § 2079.

§ 27-7-349. Article 3 supplemental to Article 1.

The provisions of this article are supplemental to the provisions of Article 1 of this chapter, and shall not be construed to repeal any part thereof not in direct conflict with this article.

SOURCES: Codes, 1942, § 9220-85; Laws, 1968, ch. 580, § 25, eff from and after January 1, 1969.

ARTICLE 5.

SETOFF AGAINST INCOME TAX REFUND FOR DEBT OWED FOR CHILD SUPPORT OR MAINTENANCE.

SEC.	
27-7-501.	Declaration of purpose.
27-7-503.	Definitions.
27-7-505.	Remedy to be in addition to others available.
27-7-507.	Submission of debts by claimant agencies.
27-7-509.	Procedural requirements; fee.
27-7-511.	Hearing upon written application.
27-7-513.	Finalization of setoff; notice; refund.
27-7-515.	Forms; rules and regulations; agreements with other states.
27-7-517.	Furnishing information to claimant agency; confidentiality.
27-7-519.	Refund deemed granted upon exercise of setoff; return of monies improperly received by claimant agency.

§ 27-7-501. Declaration of purpose.

The purpose of this article is to establish a policy and provide a system whereby claimant agencies of the State of Mississippi in conjunction with the State Tax Commission shall cooperate in identifying certain debtors who qualify for refunds from the State Tax Commission. It is the intent of the Legislature that this article be liberally construed so as to effectuate its purpose.

SOURCES: Laws, 1985, ch. 364, § 1, eff from and after July 1, 1985.

Cross References — State Tax Commission as meaning the Department of Revenue, see § 27-7-503.

§ 27-7-503. Definitions.

As used in this article, unless the context requires otherwise:

(a) “Claimant agency” means the State Department of Public Welfare with respect to the collection of debts due and owing for the care, support or maintenance of a child.

(b) “Commission, ” “State Tax Commission,” “Tax Commission” or “department” means the Department of Revenue of the State of Mississippi.

(c) “Debtor” means any individual owing overdue support for a child as defined by federal regulations.

(d) “Debt” means any overdue support for a child as defined by federal regulations.

(e) “Refund” means the Mississippi income tax refund which the commission determines to be due any individual taxpayer.

SOURCES: Laws, 1985, ch. 364, § 2; Laws, 1989, ch. 470, § 1; Laws, 2009, ch. 492, § 46, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of powers, duties and functions of State Tax Commission and Commissioner of the State Tax Commission to the Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

State Department of Public Welfare as meaning the Department of Human Services, see § 43-1-1.

§ 27-7-505. Remedy to be in addition to others available.

The collection remedy authorized by this article is in addition to and not in substitution for any other remedy available by law.

SOURCES: Laws, 1985, ch. 364, § 3, eff from and after July 1, 1985.

§ 27-7-507. Submission of debts by claimant agencies.

(1) The claimant agency may submit any debts in excess of Twenty-five Dollars ($25.00) to the commission for collection through setoff under the procedure established by this article, except in cases where the validity of the debt is legitimately in dispute and alternate means of collection would result in a loss of federal funds or federal assistance.

(2) Upon request of the claimant agency, the commission shall set off any refund against the sum certified by the claimant agency as provided in this article.

SOURCES: Laws, 1985, ch. 364, § 4; Laws, 1989, ch. 470, § 2, eff from and after passage (approved March 28, 1989).

§ 27-7-509. Procedural requirements; fee.

(1) Within the time frame specified by the commission, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each such debtor.

(2) If a debtor identified by a claimant agency is determined by the commission to be entitled to a refund of at least Twenty-five Dollars ($25.00), the commission shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the agency. When the refund owed exceeds the claimed debt, the commission shall send the excess amount to the debtor within a reasonable time after such excess is determined.

(3) At the time of the transfer of funds to a claimant agency pursuant to subsection (2), the commission shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to subsection (2), the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for a hearing must be sent, and the fact that failure to apply in writing for such a hearing within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him, such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing date of such notice, he will have waived his opportunity to contest the setoff.

(4) Upon receipt of funds transferred from the commission pursuant to subsection (2), the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

(5) The claimant agency shall pay the commission a fee, not to exceed Seventeen Dollars ($17.00) in each case in which a tax refund is identified as being available for offset. Such fees shall be deposited by the Tax Commission into a special fund hereby created in the State Treasury, out of which the Legislature shall appropriate monies to defray expenses of the commission in employing personnel to administer the provisions of this article.

SOURCES: Laws, 1985, ch. 364, § 5, eff from and after July 1, 1985.

Cross References — Tax Commission as meaning the Department of Revenue, see § 27-7-503.

As to provisions for removal of amount due and owing from escrow account upon the taxpayer's failure to timely request review, and for notice of final accounting of refund which was set off, see § 27-7-513.

§ 27-7-511. Hearing upon written application.

If the claimant agency receives a written application contesting the setoff or the claim upon which the setoff is based, it shall grant a hearing to the taxpayer to determine whether the setoff is proper or the claim is valid. If the sum asserted as due and owing is not correct, an adjustment to the claimed sum may be made. No issues shall be reconsidered at the hearing which have been previously litigated.

SOURCES: Laws, 1985, ch. 364, § 6, eff from and after July 1, 1985.

Cross References — Provisions for removal of amount due and owing from escrow account following a hearing determination, and for notice of final accounting of refund which was set off, see § 27-7-513.

§ 27-7-513. Finalization of setoff; notice; refund.

(1) Upon determination of the amount of the debt due and owing by means of the hearing provided for by Section 27-7-511 or by the taxpayer's default through failure to comply with Section 27-7-509(3) which mandates a timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account established pursuant to of Section 27-7-509(4) and shall credit such amount to the debtor's obligation.

(2) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's obligation, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting of the refund which was set off, including the amount of the refund to which the debtor was entitled prior to setoff, the amount of the debt due and owing, the amount of the refund in excess of the debt which has been returned to the debtor by the commission pursuant to subsection (2) of Section 27-7-509, and the amount of the funds transferred to the claimant agency pursuant to subsection (2) of Section 27-7-509 in excess of the debt determined to be due and owing at a hearing held pursuant to Section 27-7-511, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the commission in excess of the amount of the debt finally found to be due and owing.

SOURCES: Laws, 1985, ch. 364, § 7, eff from and after July 1, 1985.

§ 27-7-515. Forms; rules and regulations; agreements with other states.

(1) The commission is authorized to prescribe forms and adopt rules and regulations which it deems necessary to effectuate the intent and provisions of this article. All such rules and regulations shall be adopted in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq.).

(2) The commission may enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation that is substantially equivalent to the setoff procedure in this article. The agreement shall authorize the commission to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Mississippi has a reciprocal agreement and to provide for sending lists of names of Mississippi defaulters to the states with which Mississippi has a reciprocal agreement for setoff of that state's income tax refunds.

SOURCES: Laws, 1985, ch. 364, § 8, eff from and after July 1, 1985.

Editor's Note — The reference in (1) to the Mississippi Administrative Procedures Law, should be to §§ 25-43-1.101 et seq., not §§ 25-43-1 et seq. Section 25-43-1.101(3) provides that any reference to Section 25-43-1 et seq. shall be deemed to mean and refer to Section 25-43-1.101 et seq.

Comparable Laws from other States — Alabama: Code of Ala. § 40-1-35.
Arkansas: A.C.A. §§ 26-17-401 through 26-17-404.
Georgia: O.C.G.A. §§ 48-2-80, 48-7-28, 48-7-124.
Missouri: § 143.784 R.S.Mo.
Rhode Island: R.I. Gen. Laws § 44-30.2-2.
Tennessee: Tenn. Code Ann. § 20-13-109.

§ 27-7-517. Furnishing information to claimant agency; confidentiality.

(1) Pursuant to the provisions of Section 27-7-83, Mississippi Code of 1972, the commission may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this article.

(2) The information obtained by a claimant agency from the commission in accordance with the provisions of this article shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or former employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agency or employee of the commission.

SOURCES: Laws, 1985, ch. 364, § 9, eff from and after July 1, 1985.

§ 27-7-519. Refund deemed granted upon exercise of setoff; return of monies improperly received by claimant agency.

When the setoff authorized by this article is exercised, the refund which is set off shall be deemed granted. Personnel of a claimant agency shall be released from liability for improper receipt of monies under setoff procedures upon return of any monies so received.

SOURCES: Laws, 1985, ch. 364, § 10, eff from and after July 1, 1985.

ARTICLE 6.

SETOFF AGAINST FEDERAL AND STATE INCOME TAX REFUNDS.

SEC.
27-7-601. Definitions.
27-7-603. Taxpayers past due taxes; State income tax refunds to be offset to federal government; Federal income tax refunds to be offset to Mississippi State Tax Commission; procedure.

§ 27-7-601. Definitions.

As used in this article:

(a) "Debt" means a past due, legally enforceable state or federal income tax obligation, unless otherwise indicated.

(b) "Debtor" means a person who owes a state or federal income tax obligation.

(c) "Past due, legally enforceable obligation" means a debt resulting from:

(i) A judgment rendered by a court of competent jurisdiction which has determined an amount of income tax to be due;

(ii) A determination after an administrative hearing which has determined an amount of income tax to be due and which is no longer subject to judicial review; or

(iii) An income tax assessment, including self-assessments, which has become final in accordance with law, but which has not been collected.

(d) "State" means the State of Mississippi acting through the Department of Revenue.

(e) "State Tax Commission" or "department" means the Department of Revenue.

(f) "Federal government" means the United States Department of the Treasury or any agency under its administration.

(g) "Tax refund offset" means withholding or reducing a tax refund overpayment by an amount necessary to satisfy a debt owed by the payee.

(h) "Tax refund payment" means any overpayment of taxes to be refunded to the person making the overpayment.

SOURCES: Laws, 2004, ch. 516, § 1; Laws, 2009, ch. 492, § 47, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of powers, duties and functions of State Tax Commission and the Commissioner of the State Tax Commission to the Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

§ 27-7-603. Taxpayers past due taxes; State income tax refunds to be offset to federal government; Federal income tax refunds to be offset to Mississippi State Tax Commission; procedure.

(1) The federal government may submit information on any past due, legally enforceable obligation to the State Tax Commission for collection through a tax refund offset. The state may submit information on any past due, legally enforceable obligation to the federal government for collection through a tax refund offset.

(2) Upon receiving notice from the federal government that a named person owes a past due, legally enforceable obligation, the State Tax Commission shall:

(a) Reduce the amount of any tax refund payment payable to the named person by the amount of the past due, legally enforceable obligation owed the federal government and, if the tax refund exceeds the obligation, remit the excess to the person;

(b) Pay the amount by which the refund payment is reduced under paragraph (a) of this subsection to the federal government and notify the federal government of the person's name, taxpayer identification number, address and the amount collected; and

(c) Notify the named person that the tax refund payment has been reduced by an amount necessary to satisfy a past due, legally enforceable obligation.

(3) Upon receiving from the federal government the amount collected from a person who owes the state a past due, legally enforceable obligation, the State Tax Commission shall apply the amount to the person's state debt and reduce the person's obligation by the amount collected.

SOURCES: Laws, 2004, ch. 516, § 2, eff from and after passage (approved May 4, 2004.)

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-7-601.

ARTICLE 7.

SETOFF AGAINST TAX REFUND FOR DEBT OWED ON DEFAULT ON EDUCATIONAL LOANS.

SEC.	
27-7-701.	Definitions.
27-7-703.	Provision of additional remedy.
27-7-705.	Submission by claimant agency.
27-7-707.	Transfer of funds to claimant agency; notice to debtor.
27-7-709.	Hearings and appeals.
27-7-711.	Finalization of setoff; notice.
27-7-713.	Disclosure of information; confidentiality.

§ 27-7-701. Definitions.

For the purposes of this article, the following terms shall have the respective meanings ascribed by this section:

(a) "Claimant agency" means the Board of Trustees of State Institutions of Higher Learning or any institution under the jurisdiction thereof, the Mississippi Guarantee Student Loan Agency, the Mississippi Post-Secondary Education Assistance Board, or any state agency which has loaned money to an individual for educational purposes.

(b) "Debtor" means any individual owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort or operation of law, regardless of whether there is an outstanding judgment for that sum.

(d) "Commission," "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund which the commission determines to be due any individual taxpayer.

SOURCES: Laws, 1985, ch. 464, § 1; Laws, 2009, ch. 492, § 48, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of powers, duties and functions of State Tax Commission to the Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

Mississippi Post-Secondary Education Assistance Board, see § 37-106-9.

§ 27-7-703. Provision of additional remedy.

The collection remedy authorized by this article is in addition to and not in substitution for any other remedy available by law.

SOURCES: Laws, 1985, ch. 464, § 2, eff from and after July 1, 1985.

Cross References — Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

§ 27-7-705. Submission by claimant agency.

(1) A claimant agency may submit debts in excess of Twenty-five Dollars ($25.00) owed to it to the commission for collection through setoff, under the procedure established by this article, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(2) Upon the request of a claimant agency, the commission shall setoff any refund, as defined herein, against the sum certified by the claimant agency as provided in this article.

SOURCES: Laws, 1985, ch. 464, § 3, eff from and after July 1, 1985.

Cross References — Commission as meaning Department of Revenue, see §27-7-701.

Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

RESEARCH REFERENCES

ALR. Construction and application of agreement by medical or social work student to work in particular position or at particular location in exchange for financial aid in meeting costs of education. 83 A.L.R.3d 1273.

Bankruptcy discharge of student loan on ground of undue hardship under § 523(a)(8)(B) of Bankruptcy Code of 1978 (11 USCS § 523(a)(8)(B)). 63 A.L.R. Fed. 570.

Rights and obligations of Federal Government, under 20 USCS § 1080, when student borrower defaults on federally insured loan. 73 A.L.R. Fed. 303.

§ 27-7-707. Transfer of funds to claimant agency; notice to debtor.

(1) Within the time frame specified by the commission, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be setoff and certify the amount of debt or debts owed by each such debtor.

(2) If a debtor identified by a claimant agency is determined by the commission to be entitled to a refund of at least Twenty-five Dollars ($25.00), the commission shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. The State Tax Commission shall retain fifteen percent (15%) of the claimed debt as a collection fee. When the income tax refund owed exceeds the claimed debt, the commission shall send the excess amount to the debtor within a reasonable time after such excess is determined.

(3) At the time of the transfer of funds to a claimant agency pursuant to subsection (2) above, the commission shall notify the taxpayer or taxpayers whose refund is sought to be setoff that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to subsection (2) above and the intention to setoff the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for such a hearing must be sent, and the fact that the failure to apply for such a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return or a joint refund, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is

due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him, such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing of such notice, he will have waived his opportunity to contest the setoff.

(4) Upon receipt of funds transferred from the commission pursuant to subsection (2) above, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

SOURCES: Laws, 1985, ch. 464, § 4, eff from and after July 1, 1985.

Cross References — State Tax Commission as meaning the Department of Revenue, see § 27-7-701.

Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

§ 27-7-709. Hearings and appeals.

(1) When the claimant agency receives a protest or application in writing from a taxpayer within thirty (30) days of the notice issued by the commission, the claimant agency shall set a date to hear the protest and give notice to the taxpayer by registered or certified mail of the date so set. The time and place of such hearing shall be designated in such notice and the date set shall not be less than fifteen (15) days from the date of such notice. If, at hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may be made. The claimant agency shall give notice to the debtor of its final determination as provided in subsection (3) of this section.

(2) No issues shall be reconsidered at the hearing which have been previously litigated.

(3) If any debtor is dissatisfied with the final determination made at the hearing by the claimant agency, he may appeal the final determination to the circuit court of the county in which the main office of the claimant agency is located by filing notice of appeal with the administrative head of the claimant agency and with the clerk of the circuit court of the county to which the appeal shall be taken within thirty (30) days from the date notice of final determination was given by the claimant agency.

SOURCES: Laws, 1985, ch. 469, § 5, eff from and after July 1, 1985.

Cross References — Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

§ 27-7-711. Finalization of setoff; notice.

(1) Upon final determination of the amount of the debt due and owing by means of a hearing or by the taxpayer's default through failure to comply with timely request for review, the claimant agency shall remove the amount of the

debt due and owing from the escrow account and credit such amount to the debtor's obligation.

(2) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting of the refund which was setoff, including the amount of the refund to which the debtor was entitled prior to the setoff, the amount of the debt due and owing, the amount of the commission's collection fee, the amount of the refund in excess of the debt which was returned to the debtor by the commission, and the amount of the funds transferred to the claimant agency in excess of the debt determined to be due and owing at a hearing, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the commission in excess of the amount of debt finally found to be due and owing.

SOURCES: Laws, 1985, ch. 464, § 6, eff from and after July 1, 1985.

Cross References — Commission as meaning Department of Revenue, see §27-7-701.

Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

§ 27-7-713. Disclosure of information; confidentiality.

(1) Notwithstanding the provisions that prohibit disclosure by the commission of the contents of taxpayer records or information and notwithstanding any other confidentiality statute, the State Tax Commission may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this article.

(2) The information obtained by a claimant agency from the commission in accordance with the provisions of this article shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the State Tax Commission.

SOURCES: Laws, 1985, ch. 464, § 7, eff from and after July 1, 1985.

Cross References — Confidentiality of income tax information generally, see § 27-7-83.

State Tax Commission as meaning Department of Revenue, see § 27-7-701.

Duty of the Attorney General to bring suit against persons who default on educational loans or scholarships, see § 37-101-279.

ARTICLE 9.

TAXES ON CERTAIN WINNINGS PAID TO PATRONS OF GAMING ESTABLISHMENTS.

SEC.
27-7-901. Tax levied.
27-7-903. Tax levied on certain amounts paid to patrons by gaming establishments not licensed under Mississippi Gaming Control Act.

§ 27-7-901. Tax levied.

(1) There is hereby levied, assessed and shall be collected a tax of three percent (3%) upon amounts that are paid or credited by gaming establishments licensed under the provisions of the Mississippi Gaming Control Act to their patrons. The tax shall be collected by licensed gaming establishments and remitted to the State Tax Commission in the manner provided for by regulations promulgated by the Chairman of the State Tax Commission.

(2) As used in this section, "amounts that are paid or credited" means amounts or credits that are subject to the withholding or reporting requirements of the Internal Revenue Code.

(3) No credit shall be allowed under the Income Tax Law of 1952 for the tax collected by licensed gaming establishments pursuant to this section.

SOURCES: Laws, 2001, ch. 452, § 1, eff from and after Jan. 1, 2002.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Income Tax Law of 1952, generally, § 27-7-1 et seq.

Mississippi Gaming Control Act, see § 75-76-1 et seq.

§ 27-7-903. Tax levied on certain amounts paid to patrons by gaming establishments not licensed under Mississippi Gaming Control Act.

(1) There is hereby levied and assessed upon patrons of gaming establishments located in this state that are not licensed under the provisions of the Mississippi Gaming Control Act, a tax of three percent (3%) of the amounts that are paid or credited to such patrons by the gaming establishment, which tax is the same in kind and rate as has heretofore been imposed pursuant to Section 27-7-901 upon the patrons of gaming establishments which are licensed under the Mississippi Gaming Control Act. The legal incidence and duty to pay such taxes shall fall upon the patron. The assessment of such tax is subject to any exemptions as may exist under federal or state law. The State Tax Commission may enter into tax collection agreements regarding this tax.

(2) As used in this section, "amounts that are paid or credited" means amounts or credits that are subject to the withholding or reporting requirements of the Internal Revenue Code.

(3) No credit shall be allowed under the Income Tax Law of 1952 for the tax collected by gaming establishments pursuant to this section.

SOURCES: Laws, 2002, ch. 516, § 1, eff from and after Jan. 1, 2002.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Income Tax Law of 1952, generally, § 27-7-1 et seq.

Mississippi Gaming Control Act, see § 75-76-1 et seq.

ARTICLE 10.

CATASTROPHE SAVINGS ACCOUNTS.

SEC.

27-7-1001. Definitions.
27-7-1003. Catastrophe savings accounts excluded from taxable gross income; limitations on total amount of contributions to catastrophe savings accounts.
27-7-1005. Distributions from catastrophe savings accounts.
27-7-1007. Commissioner of Revenue to promulgate rules and regulations to implement and administer this article.

§ 27-7-1001. Definitions.

As used in this article, the following terms shall have the meanings as defined in this section:

(a) "Catastrophe savings account" means a regular savings account or money market account established by an insurance policyholder who is a state income taxpayer (i) to pay an insurance deductible under an insurance policy that covers the taxpayer's legal residence that covers hurricane, flood, windstorm or other catastrophic event damage, (ii) to pay for catastrophic event damage to the taxpayer's legal residence that is not covered by the policy of insurance that covers the taxpayer's legal residence for such damage after the deductible under such policy has been paid, or (iii) to pay self-insured losses for the taxpayer's legal residence from a hurricane, flood, windstorm, or other catastrophic event. The account must be labeled as a "catastrophe savings account" in order to qualify as a catastrophe savings account for the purposes of this article. A taxpayer may establish only one (1) catastrophe savings account and shall specify that the purpose of the account is to cover the aggregate amount of insurance policy deductibles and other uninsured portions of risks of loss from a hurricane, flood, windstorm or other catastrophic event.

(b) "Catastrophic event" means windstorms, cyclones, earthquakes, hurricanes, ice storms, tornadoes, high winds, flood, hail and force majeure, and similar perils not normally among those covered under most property casualty insurance policies, but obtainable through the purchase of wind,

wind and hail, flood, or storm or windstorm coverage, or any combination of those coverages. The term "catastrophic event" also includes any event or occurrence for which a Presidential declaration of disaster or declaration of disaster by the Governor is issued.

SOURCES: Laws, 2015, ch. 457, § 1, eff from and after Jan. 1, 2015.

§ 27-7-1003. Catastrophe savings accounts excluded from taxable gross income; limitations on total amount of contributions to catastrophe savings accounts.

(1) Except as otherwise provided in Section 27-7-1005, the amounts contributed to a catastrophe savings account in accordance with subsection (3) of this section, interest income earned on a catastrophe savings account, and distributions from a catastrophe savings account shall be excluded from the taxable gross income of the account holder under Section 27-7-15.

(2) A catastrophe savings account is not subject to attachment, levy, garnishment, or legal process in this state, provided that no funds in an account are derived from or the result of a fraudulent conveyance making contributions to the account.

(3) The total amount that may be contributed to a catastrophe savings account shall not exceed any of the following:

(a) In the case of an individual whose qualified insurance deductible is less than or equal to One Thousand Dollars ($1,000.00), the amount of Two Thousand Dollars ($2,000.00).

(b) In the case of an individual whose qualified insurance deductible is greater than One Thousand Dollars ($1,000.00), the amount equal to the lesser of Fifteen Thousand Dollars ($15,000.00) or twice the amount of the taxpayer's qualified insurance deductible.

(c) In the case of a self-insured individual who chooses not to obtain insurance on his or her legal residence, the amount of Three Hundred Fifty Thousand Dollars ($350,000.00), but in no event may the amount contributed exceed the value of the taxpayer's legal residence.

(4) If a taxpayer contributes in excess of the limits provided in subsection (3) of this section, the taxpayer shall withdraw the amount of the excess contributions and include that amount in the taxable gross income of the taxpayer in the year of withdrawal.

SOURCES: Laws, 2015, ch. 457, § 2, eff from and after Jan. 1, 2015.

§ 27-7-1005. Distributions from catastrophe savings accounts.

(1) A distribution from a catastrophe savings account shall be included in the taxable gross income of the taxpayer unless the amount of the distribution is used to pay qualified catastrophe expenses.

(2) No amount of a distribution shall be included in the taxable gross income of the taxpayer if the qualified catastrophe expenses of the taxpayer during the taxable year are equal to or greater than the aggregate distributions during the taxable year.

(3) If the aggregate distributions exceed the qualified catastrophe expenses during the taxable year, the amount otherwise included in the taxable gross income of the taxpayer shall be reduced by the amount of the distributions for qualified catastrophe expenses.

(4)(a) The tax paid under Section 27-7-5 that is attributable to a taxable distribution shall be increased by two and one-half percent (2-½%) of the amount of the distribution that is includable in the taxable gross income of the taxpayer.

(b) The additional tax imposed by this subsection does not apply if either of the following apply:

(i) The taxpayer no longer owns a legal residence that qualifies for homestead exemption under Section 27-33-1 et seq.; or

(ii) The distribution is from a catastrophe savings account conforming with Section 27-7-1003(3)(c) and is made on or after the date on which the taxpayer attains the age of seventy (70) years.

(5) If a taxpayer who owns a catastrophe savings account dies, the amount of money in his or her account shall be included in the taxable gross income of the person who receives the account, unless that person is the surviving spouse of the taxpayer. Upon the death of the surviving spouse, the amount of money in the account shall be included in the taxable gross income of the person who receives the account. The additional tax imposed in subsection (4) of this section does not apply to a distribution from the account upon the death of the taxpayer or the surviving spouse.

SOURCES: Laws, 2015, ch. 457, § 3, eff from and after Jan. 1, 2015.

§ 27-7-1007. Commissioner of Revenue to promulgate rules and regulations to implement and administer this article.

The Commissioner of Revenue may promulgate rules and regulations necessary to implement and administer this article.

SOURCES: Laws, 2015, ch. 457, § 4, eff from and after Jan. 1, 2015.

ARTICLE 11.

FIRST-TIME HOME BUYER SAVINGS ACCOUNTS.

SEC.	
27-7-1101.	Definitions.
27-7-1103.	Duties of account holders; contribution to first-time home buyer savings accounts excluded from gross income; limitations on amount of contributions; penalty for withdrawal of monies for purpose other than payment of eligible costs; financial institution obligations regarding accounts.

§ 27-7-1101. Definitions.

As used in this article, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Account holder" means an individual who establishes, individually or jointly with one or more other individuals, an account with a financial institution for which the account holder claims a first-time home buyer savings account status on his Mississippi income tax return.

(b) "Allowable closing costs" means a disbursement listed on a settlement statement for the purchase of a single-family residence in this state by a qualified beneficiary.

(c) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in this state by a qualified beneficiary.

(d) "Financial institution" means any bank, trust company, savings institution, consumer finance company, credit union, safe deposit company, money market mutual fund, or similar entity authorized to do business in this state.

(e) "First-time home buyer savings account" or "account" means an account with a financial institution for which the account holder claims first-time home buyer savings account status on his Mississippi income tax return for taxable year 2018 or any taxable year thereafter, pursuant to this article for the purpose of paying or reimbursing eligible costs for the purchase of a single-family residence in this state by a qualified beneficiary.

(f) "Qualified beneficiary" means an individual or individuals who reside in this state at the time of settlement on the purchase of a single-family residence in this state and:

(i) Have never owned or purchased under contract for deed, either individually or jointly, a single-family residence in this state or outside of this state;

(ii) Are designated as the beneficiary of an account designated by the account holder as a first-time home buyer savings account; and

(iii) May apply monies or funds held in such account for eligible costs. A qualified beneficiary may use the funds from such account for eligible costs regardless of whether such qualified beneficiary purchases the single-family residence as sole owner or jointly with another individual.

(g) "Settlement statement" means the statement of receipts and disbursements for a transaction related to real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 USCS Section 2601 et seq., as amended, and the regulations thereunder, or an executed sales agreement for the purchase of a manufactured home being conveyed as personal property.

(h) "Single-family residence" means a single-family residence owned and occupied by a qualified beneficiary, and also includes a manufactured home, modular home, mobile home, condominium unit, or cooperative.

(i) "State" means the State of Mississippi.

SOURCES: Laws, 2017, ch. 376, § 1, eff from and after Jan. 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by deleting the subsection (1) designation from the first paragraph. The section was enacted with a subsection designated (1) but no subsection designated (2). The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Note — Laws of 2017, ch. 376, § 4, effective January 1, 2017, provides:

"SECTION 4. Sections 1 and 2 of this act shall be codified as new sections in Chapter 7, Title 27, Mississippi Code of 1972."

Laws of 2017, ch. 376, § 5, effective January 1, 2017, provides:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-7-1103. Duties of account holders; contribution to first-time home buyer savings accounts excluded from gross income; limitations on amount of contributions; penalty for withdrawal of monies for purpose other than payment of eligible costs; financial institution obligations regarding accounts.

(1)(a) An account holder shall be responsible for the use or application of monies or funds in an account for which the account holder claims first-time home buyer savings account status.

(b) An account holder shall:

(i) Not use monies or funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution;

(ii) Maintain documentation of the segregation of monies or funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence in this state (such documentation may include the settlement statement); and

(iii) File with the account holder's Mississippi income tax return forms developed by the Department of Revenue regarding treatment of the account as a first-time home buyer savings account under this article, along with the federal Form 1099 issued by the financial institution for such account.

(2)(a) Except as otherwise provided in this article and Section 27-7-15, amounts contributed to and all interest or other income earned attributable to an account and monies or funds withdrawn or distributed from an account for the payment of eligible costs by or on behalf of a qualified beneficiary shall be excluded from the gross income of the account holder as provided under Section 27-7-15.

(b)(i) The amount of contributions made by an account holder in any tax year to a first-time home buyer savings account to be excluded from gross income as provided under Section 27-7-15 shall not exceed Two Thousand Five Hundred Dollars ($2,500.00) for any account holder who files an individual return.

(ii) The amount of contributions made by an account holder in any tax year to a first-time home buyer savings account to be excluded from gross income as provided under Section 27-7-15 shall not exceed Five Thousand Dollars ($5,000.00) for any married couple who are joint account holders and file a joint return. Only cash and marketable securities may be contributed to an account. name

(c) Upon being furnished proof of the death of an account holder, a financial institution shall distribute the principal and accumulated interest or other income of the account in accordance with the terms of the contract governing the account.

(3) If monies or funds are withdrawn from an account for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, then such monies or funds withdrawn from an account shall be added to gross income as provided in Section 27-7-15. In addition, there shall be imposed a penalty calculated using the federal Form 1099 showing the amount of income exempted from state income tax and assessing a ten percent (10%) penalty on the amount of such exempted income. However, the penalty shall not apply to the extent of monies or funds withdrawn that were (a) withdrawn by reason of the qualified beneficiary's death or disability, (b) a disbursement of assets of the account pursuant to a filing for protection under the United States Bankruptcy Code, 11 USCS Sections 101 through 1330, or (c) transferred from an account established under this article into another account established under this article for the benefit of another qualified beneficiary.

(4)(a) Financial institutions shall not be required to:

(i) Designate an account as a first-time home buyer savings account, or designate the beneficiaries of such accounts, in the financial institutions' account contracts or systems or in any other way;

(ii) Track the use of funds withdrawn from such accounts;

(iii) Allocate funds in such accounts among joint account owners or multiple beneficiaries; or

(iv) Report any of the information described in (i), (ii) or (iii) to the Department of Revenue or other governmental agency.

(b) In addition, financial institutions shall not be responsible for or liable for:

(i) Determining or ensuring that an account satisfies the requirements to be a first-time home buyer savings account;

(ii) Determining or ensuring that costs are eligible costs;

(iii) Reporting or remitting taxes or penalties for such accounts; or

(iv) Ensuring that an account holder meets his or her obligations under this section in any way.

(c) Financial institutions shall be held harmless by the Department of Revenue for any actions taken with respect to a first-time home buyer savings account, and the account holder shall indemnify and hold harmless his or her financial institution and its successors and assigns from and against claims, damages, losses, penalties and expenses, including, but not limited to, reasonable attorney's fees arising out of or resulting from their first-time home buyers savings account.

(5) The Department of Revenue shall have all powers necessary to implement and administer this article, and the department shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section. However, s uch guidelines shall not apply to, or impose administrative, reporting, or other obligations or requirements on, financial institutions-related accounts for which first-time home buyer savings account status is claimed by the account holder.

(6) Any person who knowingly prepares or causes to be prepared a false claim, receipt, statement or billing to avoid or evade taxes or penalties upon the withdrawal of money or funds from an account is guilty of a misdemeanor, and upon conviction, shall be punished as provided in Section 99-19-31.

SOURCES: Laws, 2017, ch. 376, § 2, eff from and after Jan. 1, 2017.

Editor's Note — Laws of 2017, ch. 376, § 4, effective January 1, 2017, provides:

"SECTION 4. Sections 1 and 2 of this act shall be codified as new sections in Chapter 7, Title 27, Mississippi Code of 1972."

Laws of 2017, ch. 376, § 5, effective January 1, 2017, provides:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

Imposition of standard state assessment in addiction to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 8

Mississippi S Corporation Income Tax Act

Sec.
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27-8-3. Definitions.
27-8-5. Uniformity with other states' statutes.
27-8-7. Exemption from Chapter 7 income tax; calculation of shareholders' gross income.
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27-8-13. Carryforwards and carrybacks; accounting for losses and deductions.
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27-8-17. Treatment of stock or money distributions to resident shareholders.
27-8-19. Filing of corporate income tax return; when required; information required; composite returns; agreement or payment as to nonresident shareholders.
27-8-21. Credit for income tax paid by shareholder to another state.

§ 27-8-1. Title of chapter.

The title of this chapter shall be the "Mississippi S Corporation Income Tax Act."

SOURCES: Laws, 1993, ch. 456, § 1, eff from and after January 1, 1994.

Cross References — Mississippi Income Tax Law provisions, see § 27-7-1 et seq.
Comparable Laws from other States — Colorado: C.R.S. 39-22-320 et seq.
Hawaii: HRS § 235-121 et seq.
North Carolina: N.C. Gen. Stat. § 105-131 et seq.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-3. Definitions.

(1) For purposes of this chapter, the following terms shall have meanings ascribed below:

(a) "C corporation" means a corporation which is not an S corporation.

(b) "Code" means the Internal Revenue Code of 1986, as amended and as applicable to the taxable period; references to sections of the code shall be deemed to refer to corresponding provisions of prior and subsequent federal tax laws.

(c) "Income attributable to the state" means items of income, loss, deduction or credit of the S corporation apportioned to this state under Section 27-7-23(c)(2) or allocated to this state under Section 27-7-23(c)(3).

(d) "Income not attributable to the state" means all items of income, loss, deduction or credit of the S corporation other than income attributable to the state.

(e) "Post-termination transition period" means that period defined in Section 1377(b)(1) of the code.

(f) "Pro rata share" means the portion of any item attributable to an S corporation shareholder for a taxable period determined in the manner provided in, and subject to any election made under, Section 1377(a) or 1362(e), as the case may be, of the code.

(g) "S corporation" means a corporation for which a valid election under Section 1362(a) of the code is in effect.

(h) "Taxable period" means any taxable year or portion of a taxable year during which a corporation is an S corporation.

(2) Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter shall have the same meaning as when used in a comparable context in the code, or in any statute relating to federal income taxes, in effect for the taxable period. Due consideration shall be given in the interpretation of this chapter to applicable sections of the code in effect from time to time and to federal rulings and regulations interpreting such sections, provided such code, rulings and regulations do not conflict with the provisions of this chapter.

SOURCES: Laws, 1993, ch. 456, § 2; Laws, 2001, ch. 586, § 6, eff from and after Jan. 1, 2001.

Editor's Note — Laws of 2001, ch. 586, §§ 8, 9, effective January 1, 2001, provide as follows:

"SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

"SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act."

Cross References — Shareholder of S corporation, as defined in § 27-8-3, to take into account income, loss, deduction or credit of S corporation only to extent provided in § 27-8-7, see § 27-7-15.

Federal Aspects — Internal Revenue Code of 1986, see 26 USCS § 1 et seq.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-5. Uniformity with other states' statutes.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this chapter among states enacting it.

SOURCES: Laws, 1993, ch. 456, § 3, eff from and after January 1, 1994.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-7. Exemption from Chapter 7 income tax; calculation of shareholders' gross income.

(1) An S corporation shall not be subject to the tax imposed by Section 27-7-5.

(2) For purposes of Section 27-7-15, each shareholder's pro rata share of the S corporation's income attributable to the state, and each resident shareholder's pro rata share of the S corporation's income not attributable to the state, shall be taken into account by the shareholder in the manner provided in Section 1366 of the Code.

(3) For purposes of determining the amounts taken into account by the shareholders of an S corporation under subsection (2) of this section, the amount of any tax imposed on the S corporation under the Code shall not reduce the S corporation's income attributable to the state and income not attributable to the state.

SOURCES: Laws, 1993, ch. 456, § 4, eff from and after January 1, 1994.

Cross References — Shareholder of S corporation, as defined in § 27-8-3, to take into account income, loss, deduction or credit of S corporation only to extent provided in § 27-8-7, see § 27-7-15.

Character of items received by corporation under this section, but accounted for by shareholder, see § 27-8-9.

Application of this section to adjustment of basis of nonresident shareholder in the stock and indebtedness of an S corporation, see § 27-8-11.

Limit on aggregate amount of losses or deductions of S corporation taken into account by shareholder pursuant to this section, see § 27-8-13.

Federal Aspects — Section 1366 of the Internal Revenue Code, see 26 USCS § 1366.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-9. Character of items received by corporation but accounted for by shareholder.

The character of any S corporation item taken into account by a shareholder of an S corporation under Section 27-8-7(2) shall be determined as if such item were received or incurred by the S corporation and not its shareholder.

SOURCES: Laws, 1993, ch. 456, § 5, eff from and after January 1, 1994.

§ 27-8-11. Stock basis; adjustments; differences for resident or nonresident shareholders; gifts of stock.

(1) The initial basis in the hands of a resident shareholder of an S corporation in the stock of the S corporation and any indebtedness of the S corporation to the shareholder shall be determined in the manner provided under the Code and shall be determined as of the date that is the latest to occur of (a) the date on which the shareholder last became a resident of this state, (b) the date on which the shareholder acquired the stock or the indebtedness of the corporation or (c) the effective date of the corporation's most recent S election under the Code. This date may be before January 1, 1994.

(2) The initial basis of a resident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsection (1) of this section in the manner and to the extent required by Section 1011 of the Code except that, with respect to any taxable period during which the shareholder is a resident of this state,

(a) Any differences between state and federal taxable income shall be taken into account; and

(b) Any adjustments made pursuant to Section 1367 of the Code for a taxable period during which this state did not measure the income of a shareholder of an S corporation by reference to the S corporation's income shall not be taken into account.

(3) The initial basis in the hands of a nonresident shareholder of an S corporation in the stock of the S corporation and any indebtedness of the S corporation to the shareholder shall be zero as of the date that is the latest to occur of (a) the date on which the shareholder last became a nonresident of this state, (b) the date on which the shareholder acquired the stock or the indebtedness of the corporation or (c) the effective date of the corporation's most recent S election under the Code. This date may be before January 1, 1994.

(4) The initial basis of a nonresident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsection (3) of this section as provided in Section 1367 of the Code, except that such adjustments shall be limited to that portion of the income attributable to the state that is taken into account by the shareholder pursuant to Section 27-8-7(2). In computing income attributable to the state for purposes of the preceding sentence, any modification made for income exempt from federal or this state's taxation shall not be taken into account.

(5) The basis in the hands of a resident shareholder of an S corporation in the stock of the S corporation shall be reduced by the amount allowed as a loss or deduction pursuant to Section 27-8-13(4).

(6) The basis in the hands of a resident shareholder of an S corporation in the stock of the S corporation shall be reduced by the amount of any cash distribution which is not taxable to the shareholder as a result of the application of Section 27-8-17(2).

(7) For purposes of this section, any person acquiring stock or indebtedness of an S corporation by gift from a person who is a resident of this state at the time of the gift shall be considered to have acquired the stock or indebtedness at the time the donor acquired the stock or indebtedness.

SOURCES: Laws, 1993, ch. 456, § 6, eff from and after January 1, 1994.

Cross References — Aggregate amount of losses or deductions of S corporation taken into account by shareholder not to exceed shareholder's combined adjusted basis determined in accordance with this section, see § 27-8-13.

Federal Aspects — Sections 1011 and 1367 of the Internal Revenue Code, see 26 USCS §§ 1011, 1367.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-13. Carryforwards and carrybacks; accounting for losses and deductions.

(1) Carryforwards and carrybacks to and from taxable periods of an S corporation shall be restricted in the manner provided in Section 1371(b) of the Code.

(2) The aggregate amount of losses or deductions of an S corporation taken into account by a shareholder of the S corporation for a taxable period pursuant to Section 27-8-7(2) shall not exceed the shareholder's combined adjusted basis, determined in accordance with Section 27-8-11, in the stock of the S corporation and any indebtedness of the S corporation to the shareholder.

(3) Any loss or deduction of an S corporation which is disallowed for a taxable period pursuant to subsection (2) of this section shall be treated as incurred by the corporation in the succeeding taxable period with respect to that shareholder.

(4)(a) Any loss or deduction of an S corporation, which is disallowed pursuant to subsection (2) of this section for the corporation's last taxable period as an S corporation, shall be treated as incurred by a shareholder on the last day of any post-termination transition period.

(b) The aggregate amount of losses and deductions taken into account by a shareholder under subsection (4)(a) of this section shall not exceed the shareholder's adjusted basis in the stock of the corporation (determined in accordance with Section 27-8-11 at the close of the last day of any post-termination transition period and without regard to this subsection (4)).

SOURCES: Laws, 1993, ch. 456, § 7, eff from and after January 1, 1994.

Cross References — Basis in stock of S corporation reduced by amount allowed as loss or deduction pursuant to this section, see § 27-8-11.

Federal Aspects — Section 1371 of the Internal Revenue Code, see 26 USCS § 1371.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-15. Apportionment of income to shareholder for periods of state residency and nonresidency within same year.

For purposes of this chapter, if a shareholder of an S corporation is both a resident and nonresident of this state during any taxable period, the shareholder's pro rata share of the S corporation's income attributable to the state and income not attributable to the state for the taxable period shall be further prorated between the shareholder's periods of residence and nonresidence during the taxable period, in accordance with the number of days in each period.

SOURCES: Laws, 1993, ch. 456, § 8, eff from and after January 1, 1994.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-17. Treatment of stock or money distributions to resident shareholders.

(1) Subject to subsection (3) of this section, a distribution made by an S corporation with respect to its stock to a resident shareholder shall be taken into account by the shareholder for purposes of Section 27-7-15 to the extent that the distribution is treated as a dividend or as gain from the sale or exchange of property pursuant to Section 1368 of the Code.

(2) Subject to subsection (3) of this section, a distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period shall not be taken into account by the shareholder for purposes of Section 27-7-15 to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with Section 1371(e) of the Code.

(3) In applying Sections 1368 and 1371(e) of the Code to any distribution referred to in subsection (1) or (2) of this section,

(a) The term "adjusted basis of the stock" means the shareholder's adjusted basis in the stock of the S corporation, as determined under Section 27-8-11; and

(b) The term "accumulated adjustments account" means an amount that is equal to, and adjusted in the same manner as, the S corporation's accumulated adjustments account defined in Section 1368(e)(1)(A) of the Code, except that any differences between state and federal taxable income shall be taken into account.

SOURCES: Laws, 1993, ch. 456, § 9, eff from and after January 1, 1994.

Cross References — Basis in stock of S corporation reduced by amount of cash distribution which is not taxable to shareholder pursuant to this section, see § 27-8-11.

S corporation to maintain accumulated adjustments accounts described in this section, see § 27-8-19.

Federal Aspects — Sections 1368 and 1371 of the Internal Revenue Code, see 26 USCS §§ 1368, 1371.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-19. Filing of corporate income tax return; when required; information required; composite returns; agreement or payment as to nonresident shareholders.

(1) An S corporation which engages in activities in this state that would subject a C corporation to the requirement to file a return under Section 27-7-37 shall file with the State Tax Commission an annual return, in the form prescribed by the commission, on or before the due date prescribed for the filing of C corporation returns under Section 27-7-41. The return shall set forth the name, address and social security or federal identification number of each shareholder; the income attributable to the state and income not attributable to the state with respect to each shareholder as determined under this chapter; and such other information as the commission may prescribe by regulation. The S corporation shall furnish, on or before the day on which such return is filed, to each person who was a shareholder during the year a copy of such information shown on the return as the commission may prescribe by regulation. The S corporation also shall maintain the accumulated adjustments account described in Section 27-8-17(3)(b).

(2) The State Tax Commission shall permit S corporations to file composite returns and to make composite payments of tax on behalf of some or all of its nonresident shareholders. The commission may permit composite returns and payments to be made on behalf of resident shareholders.

(3) With respect to each of its nonresident shareholders and for each taxable period, an S corporation shall (a) timely file with the commission an agreement as provided in subsection (4) of this section or (b) make a payment to this state as provided in subsection (5) of this section. An S corporation that timely files an agreement as provided in subsection (4) of this section with respect to a nonresident shareholder for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. An S corporation that does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods.

(4) The agreement referred to in subsection (3)(a) of this section is an agreement of a nonresident shareholder of the S corporation:

(a) To file a return and to make timely payment of all taxes imposed on the shareholder by this state with respect to the income of the S corporation; and

(b) To be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the shareholder by this state with respect to the income of the S corporation.

The agreement will be considered to be timely filed for a taxable period and for all subsequent taxable periods if it is filed at or before the time the annual return for such taxable period is required to be filed.

In the event the S corporation fails to obtain an agreement of a nonresident shareholder as provided in subsection (3)(a) of this section or in the event a nonresident shareholder of an S corporation fails to file a return and to make timely payments of all taxes imposed on the shareholder by this state as provided in subsection (4)(a) of this section, the S corporation shall make a payment to the state as provided in subsection (5) of this section.

(5) The payment referred to in subsection (3)(b) and (4) of this section shall be in an amount equal to the highest marginal tax rate in effect under Section 27-7-5 multiplied by the shareholder's pro rata share of the income attributable to the state reflected on the corporation's return for the taxable period. An S corporation shall be entitled to recover a payment made pursuant to the preceding sentence from the shareholder on whose behalf the payment was made. Any such payment for a taxable period must be made at or before the time the annual return for such taxable period is required to be filed.

(6) Any amount paid by the corporation to this state under subsection (2) or (5) of this section shall be considered to be a payment by the shareholder on account of the income tax imposed on the shareholder for the taxable period under Section 27-7-5.

SOURCES: Laws, 1993, ch. 456, § 10, eff from and after January 1, 1994.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

§ 27-8-21. Credit for income tax paid by shareholder to another state.

For purposes of Section 27-7-77, each resident shareholder shall be considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S corporation to a state which does not measure the income of shareholders of an S corporation by reference to the income of the S corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

SOURCES: Laws, 1993, ch. 456, § 11, eff from and after January 1, 1994.

RESEARCH REFERENCES

ALR. State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

CHAPTER 9

Estate Tax

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27-9-25.	No administration; false return; duty of commissioner.
27-9-27.	When tax due.
27-9-29.	Receipts; executor's return, discharge.
27-9-31.	Repealed.
27-9-33.	Party paying reimbursed.
27-9-35.	Lien.
27-9-37.	Personal liability of the executor.
27-9-39.	Action for recovery of taxes; applicable laws.
27-9-41.	Tax upon settlement of executor's account.
27-9-43.	Examination of returns.
27-9-45.	Additional taxes; assessments following determination of taxpayer's contest with federal government.
27-9-47.	Repealed.
27-9-49.	Refunds; appeal of initial denial.
27-9-51.	Administration.
27-9-53.	Regulations.
27-9-55.	Secrecy required.
27-9-57.	Penalties.
27-9-59.	Chapter in force until federal estate tax repealed.
27-9-61.	Prior claims not affected by chapter.

§ 27-9-1. Citation of chapter.

This chapter may be cited as the estate tax law.

SOURCES: Codes, 1942, § 9262-01; Laws, 1956, ch. 413, § 1.

Cross References — Uniform Estate Tax Apportionment Act, see § 27-10-1 et seq.

RESEARCH REFERENCES

ALR. Inter vivos settlement of disputed claim as consideration within statutes excepting transfers for consideration from estate, succession, or inheritance tax. 13

A.L.R.3d 657.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 1 et seq.

CJS. 85 C.J.S., Taxation § 2080 et seq.

§ 27-9-3. Definitions.

When used in reference to the estate tax in this chapter:

(a) "Commission," "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner," "Chairman of the State Tax Commission" or "chairman of the commission" means the Commissioner of Revenue of the Department of Revenue, or any agent appointed by law under him.

(c) "Executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent.

(d) "Person" means persons, corporations, associations, joint stock companies and business trusts.

(e) "Transfer" shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(f) "Decedent" shall include the testator, intestate, grantor, bargainor, vendor or donor.

(g) "Resident" means natural persons and includes for the purpose of determining liability for the tax imposed, any person domiciled in the State of Mississippi and any other person who maintains a permanent place of abode within the state and spends in the aggregate, more than six (6) months of the taxable year within the state.

(h) "Nonresident" shall apply to any natural person whose domicile is without the State of Mississippi or who maintains a place of abode without the state, and spends in the aggregate, more than six (6) months of the taxable year without the state.

SOURCES: Codes, 1942, § 9262-02; Laws, 1956, ch. 413, § 2; Laws, 2009, ch. 492, § 49, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the

administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of powers, duties and functions of the State Tax Commission and Commissioner of the State Tax Commission to the Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 1 et seq.

CJS. 85 C.J.S., Taxation § 2080.

§ 27-9-5. Tax levy.

[For decedents dying after March 22, 1956, and before October 1, 1988, this section shall read as follows:]

A tax equal to the sum of the following percentages of the value of the net estate is hereby imposed upon the transfer of the net estate of every decedent dying after March 22, 1956, and before October 1, 1988, whether a resident or a nonresident of the State of Mississippi:

MISSISSIPPI ESTATE TAX SCHEDULE

Over	But not over		Of excess over
$ -0-	$ 60,000	1%	
60,000	100,000	$ 600 plus 1.6%	60,000
100,000	200,000	1,240 plus 2.4%	100,000
200,000	400,000	3,640 plus 3.2%	200,000
400,000	600,000	10,040 plus 4.0%	400,000
600,000	800,000	18,040 plus 4.8%	600,000
800,000	1,000,000	27,640 plus 5.6%	800,000
1,000,000	1,500,000	38,840 plus 6.4%	1,000,000
1,500,000	2,000,000	70,840 plus 7.2%	1,500,000
2,000,000	2,500,000	106,840 plus 8.0%	2,000,000
2,500,000	3,000,000	146,840 plus 8.8%	2,500,000
3,000,000	3,500,000	190,840 plus 9.6%	3,000,000
3,500,000	4,000,000	238,840 plus 10.4%	3,500,000
4,000,000	5,000,000	290,840 plus 11.2%	4,000,000
5,000,000	6,000,000	402,840 plus 12.0%	5,000,000
6,000,000	7,000,000	522,840 plus 12.8%	6,000,000
7,000,000	8,000,000	650,840 plus 13.6%	7,000,000
8,000,000	9,000,000	786,840 plus 14.4%	8,000,000
9,000,000	10,000,000	930,840 plus 15.2%	9,000,000
10,000,000 and over		1,082,840 plus 16.0%	10,000,000

Provided, however, that the tax due under this section shall not be less than the state death tax credit allowable under Title 26, Section 2011, USCS.

[For decedents dying on or after October 1, 1988, and before October 1, 1989, this section shall read as follows:]

A tax equal to the sum of the following percentages of the value of the net estate is hereby imposed upon the transfer of the net estate of every decedent dying on or after October 1, 1988, and before October 1, 1989, whether a resident or a nonresident of the State of Mississippi:

MISSISSIPPI ESTATE TAX SCHEDULE

Over	But not over		Of excess over
$ -0-	$ 100,000	1.7%	
100,000	200,000	1,700 plus 3.4%	100,000
200,000	400,000	5,100 plus 5.2%	200,000
400,000	600,000	15,500 plus 6.6%	400,000
600,000	800,000	28,700 plus 8.0%	600,000
800,000	1,000,000	44,700 plus 9.7%	800,000
1,000,000	1,500,000	64,100 plus 11.4%	1,000,000
1,500,000	2,000,000	121,100 plus 12.7%	1,500,000
2,000,000	2,500,000	184,600 plus 14.0%	2,000,000
2,500,000	3,000,000	254,600 plus 15.3%	2,500,000
3,000,000	3,500,000	331,100 plus 16.7%	3,000,000
3,500,000 and over		414,600 plus 18.4%	3,500,000

Provided, however, that the tax due under this section shall not be less than the state death tax credit allowable under Title 26, Section 2011, USCS.

[For decedents dying on or after October 1, 1989, and before October 1, 1990, this section shall read as follows:]

A tax equal to the sum of the following percentages of the value of the net estate is hereby imposed upon the transfer of the net estate of every decedent dying on or after October 1, 1989, and before October 1, 1990, whether a resident or a nonresident of the State of Mississippi:

MISSISSIPPI ESTATE TAX SCHEDULE

Over	But not over		Of excess over
$ -0-	$ 100,000	1.4%	
100,000	200,000	1,400 plus 2.8%	100,000
200,000	400,000	4,200 plus 4.4%	200,000
400,000	600,000	13,000 plus 5.75%	400,000
600,000	800,000	24,500 plus 6.9%	600,000
800,000	1,000,000	38,300 plus 8.3%	800,000
1,000,000	1,500,000	54,900 plus 9.7%	1,000,000
1,500,000	2,000,000	103,400 plus 10.85%	1,500,000
2,000,000	2,500,000	157,650 plus 12.0%	2,000,000
2,500,000	3,000,000	217,650 plus 13.15%	2,500,000

Over	But not over		Of excess over
3,000,000	3,500,000	283,400 plus 14.3%	3,000,000
3,500,000	4,000,000	354,900 plus 15.7%	3,500,000
4,000,000	5,000,000	433,400 plus 16.1%	4,000,000
5,000,000	6,000,000	594,400 plus 16.5%	5,000,000
6,000,000	7,000,000	759,400 plus 16.9%	6,000,000
7,000,000	8,000,000	928,400 plus 17.3%	7,000,000
8,000,000	9,000,000	1,101,400 plus 17.7%	8,000,000
9,000,000	10,000,000	1,278,400 plus 18.1%	9,000,000
10,000,000 and over		1,459,400 plus 18.5%	10,000,000

Provided, however, that the tax due under this section shall not be less than the state death tax credit allowable under Title 26, Section 2011, USCS.

[For decedents dying on or after October 1, 1990, and before January 1, 2000, this section shall read as follows:]

A tax equal to the sum of the following percentages of the value of the net estate is hereby imposed upon the transfer of the net estate of every decedent dying on or after October 1, 1990, whether a resident or a nonresident of the State of Mississippi:

MISSISSIPPI ESTATE TAX SCHEDULE

Over	But not over		Of excess over
$ -0-	$ 60,000	1%	
60,000	100,000	$ 600 plus 1.6%	60,000
100,000	200,000	1,240 plus 2.4%	100,000
200,000	400,000	3,640 plus 3.2%	200,000
400,000	600,000	10,040 plus 4.0%	400,000
600,000	800,000	18,040 plus 4.8%	600,000
800,000	1,000,000	27,640 plus 5.6%	800,000
1,000,000	1,500,000	38,840 plus 6.4%	1,000,000
1,500,000	2,000,000	70,840 plus 7.2%	1,500,000
2,000,000	2,500,000	106,840 plus 8.0%	2,000,000
2,500,000	3,000,000	146,840 plus 8.8%	2,500,000
3,000,000	3,500,000	190,840 plus 9.6%	3,000,000
3,500,000	4,000,000	238,840 plus 10.4%	3,500,000
4,000,000	5,000,000	290,840 plus 11.2%	4,000,000
5,000,000	6,000,000	402,840 plus 12.0%	5,000,000
6,000,000	7,000,000	522,840 plus 12.8%	6,000,000
7,000,000	8,000,000	650,840 plus 13.6%	7,000,000
8,000,000	9,000,000	786,840 plus 14.4%	8,000,000
9,000,000	10,000,000	930,840 plus 15.2%	9,000,000
10,000,000 and over		1,082,840 plus 16.0%	10,000,000

Provided, however, that the tax due under this said section shall not be less than the state death tax credit allowable under Title 26, Section 2011, USCS.

[For decedents dying on or after January 1, 2000, this section shall read as follows:]

A tax is hereby imposed upon the transfer of the net estate of every decedent dying on or after January 1, 2000, in an amount equal to the maximum amount of state death tax credit permissible as a credit or deduction in computing any federal estate tax payable by the estate according to the act of Congress in effect, on the date of the death of the decedent, taxing such estate with respect to the items subject to taxation in Mississippi. The tax imposed by this section shall not exceed the aggregate amounts which may by any law of the United States be allowed to be credited against or deducted for federal estate tax. The tax imposed by this section shall be due in the proportion that the estate located in Mississippi bears to the entire estate wherever located. The estate tax hereby imposed by this section shall only be exercised or enforced to the extent of absorbing the amount of any deduction or credit which may be permitted by the laws of the United States now existing or hereafter enacted to be claimed as a deduction or credit against such similar tax of the United States applicable to Mississippi estates.

SOURCES: Codes, 1942, § 9262-03; Laws, 1956, ch. 413, § 3; Laws, 1978, ch. 452, § 1; Laws, 1988, ch. 549, § 1; Laws, 1989, ch. 521, § 1; Laws, 2000, ch. 490, § 1, eff from and after passage (approved Apr. 27, 2000.)

RESEARCH REFERENCES

ALR. Estate tax consequences of reciprocal trusts. 38 A.L.R.2d 522.

Children of adopted child, or adopted children of natural child, as "lineal descendants" within provisions of inheritance, succession, or estate tax statutes respecting exemption and rates. 51 A.L.R.2d 854.

Accumulations of income in inter vitros trust in favor of third person as subject to estate or succession tax at settlor's death. 55 A.L.R.2d 415.

State succession, transfer, inheritance, or estate tax in respect of life insurance and annuities. 73 A.L.R.2d 157.

Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument. 67 A.L.R.3d 273.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 7 et seq.

CJS. 85 C.J.S., Taxation § 2082 et seq.

§ 27-9-7. The gross estate; alternate method of valuation.

[For decedents dying before October 1, 1988, this section shall read as follows:]

The value of the gross estate of the decedent shall be determined by including the value at the time of the decedent's death; or the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within six (6) months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within six (6) months after the decedent's death such property shall be valued as of the date six (6) months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included as its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

Executors and others filing returns under this chapter shall use whichever of the above methods of valuation more nearly complies with the one used on the federal estate tax return.

The value of the gross estate of the decedent shall be determined by including the value at the time of decedent's death or by use of the above alternative method of valuation of all property, real or personal, tangible or intangible:

(a) To the extent of the interest of deceased in all property in which deceased has an interest, except for the following: (i) in the case of a resident, real property and tangible personal property located outside Mississippi; (ii) the amount of all proceeds of an annuity or other payment receivable by any beneficiary under a military family protection plan, survivor benefit plan or other comparable plan, pursuant to Chapter 73, Title 10, United States Code; (iii) the pay and allowances determined by the United States to be due a member of its armed forces for service in the Vietnam Conflict after August 5, 1964, for the period between the date declared by the United States as the beginning of his missing in action status to the date determined by the United States to be the date of his death; provided, that, in cases where a tax has been paid on such pay and allowances pursuant to this chapter, an application for refund of such tax shall be made by January 1, 1982; and (iv) in the case of a nonresident, intangible personal property even when located in Mississippi;

(b) To the extent of any interest therein held jointly or as tenants by the entirety, by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent, and the burden shall be upon the one seeking to exclude such property from the estate tax to show such part as originally belonged to him; provided, however, if the decedent and the decedent's spouse were the only owners of property or any interests held jointly or as tenants by the entirety, it shall be assumed that each spouse contributed equally to the acquisition of the property unless the surviving spouse shall prove that his or her contribution was greater than one-half (½) of the cost of such property;

(c) To the extent of any property passing under a general power of appointment exercised by the decedent by will, or by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust in contemplation of or intended to take effect in possession or enjoyment at or after his death, whether such transfer or trust is made or created before or after March 22, 1956, except in case of a bona fide sale for a fair consideration in money or money's worth; any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by a decedent within three (3) years of his death without consideration shall be deemed prima facie to have been made in contemplation of death, within the meaning of this statute, and the burden of proof shall be on the person administering the estate or the beneficiaries of the estate to establish that said transfer was not so made by such decedent;

(e) To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent; to the extent of excess of twenty thousand dollars ($20,000.00) receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership exercisable either alone or in conjunction with any other person.

(f) With respect to any annuity plan of a decedent, other than an annuity described in item (a) of this subsection, to the extent only of the decedent's contribution to such plan or plans.

[For decedents dying on or after October 1, 1988, this section shall read as follows:]

The value of the gross estate of the decedent shall be determined by including the value at the time of the decedent's death; or the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged or otherwise disposed of, within six (6) months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange or other disposition.

(2) In the case of property not distributed, sold, exchanged or otherwise disposed of, within six (6) months after the decedent's death such property shall be valued as of the date six (6) months after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included as its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

Executors and others filing returns under this chapter shall use whichever of the above methods of valuation more nearly complies with the one used on the federal estate tax return.

The value of the gross estate of the decedent shall be determined by including the value at the time of decedent's death or by use of the above alternative method of valuation of all property, real or personal, tangible or intangible:

(a) To the extent of the interest of deceased in all property in which deceased has an interest, except for the following: (i) in the case of a resident, real property and tangible personal property located outside Mississippi; (ii) the amount of all proceeds of an annuity or other payment receivable by any beneficiary under a military family protection plan, survivor benefit plan or other comparable plan, pursuant to Chapter 73, Title 10, United States Code; (iii) the pay and allowances determined by the United States to be due a member of its armed forces for service in the Vietnam Conflict after August 5, 1964, for the period between the date declared by the United States as the beginning of his missing in action status to the date determined by the United States to be the date of his death; provided, that, in cases where a tax has been paid on such pay and allowances pursuant to this chapter, an application for refund of such tax shall be made by January 1, 1982; and (iv) in the case of a nonresident, intangible personal property even when located in Mississippi;

(b) To the extent of any interest therein held jointly or as tenants by the entirety, by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent, and the burden shall be upon the one seeking to exclude such property from the estate tax to show such part as originally belonged to him; provided, however, if the decedent and the decedent's spouse were the only owners of property or any interests held jointly or as tenants by the entirety, it shall be assumed that each spouse contributed equally to the acquisition of the property unless the surviving spouse shall prove that his or her contribution was greater than one-half (½) of the cost of such property;

(c) To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment described in this item (c) and to the extent of any property subject to a general power of appointment described in this item (c) that the decedent has at any time before his death exercised or released by deed or other document executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; a general power of appointment is described in this item (c) if, and to the extent that, (i) a deduction was allowed under Section 27-9-10 or subsection (2) of Section 27-9-15 to the estate of the spouse of the decedent for the property subject to the power and (ii) no such deduction would have been allowed for that property if the decedent did not have the power;

(d) To the extent of any property passing under a general power of appointment exercised by the decedent by will, or by deed or other document executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth;

(e) To the extent of any property for which a deduction was allowed under subsection (1) of Section 27-9-10 or subsection (2) of Section 27-9-15 to the estate of the decedent's spouse because the property was qualified terminable interest property within the meaning of subsection (1)(a)(i) of Section 27-9-10; if the decedent before his death disposed of any part of his qualifying income interest for life, as defined at subsection (1)(a)(ii) of Section 27-9-10, in such property, the value for such property that shall be included shall be equal to the product of the value of such property multiplied by the fractional part of the qualifying income interest for life that is held by the decedent at his death; if, however, the decedent before his death disposed of any part of his qualifying income interest for life in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth, the value for such property that shall be included shall instead be equal to the product of the value of such property multiplied by the sum of (i) the fractional part of the qualifying income interest for life that is held by the decedent at his death and (ii) the fractional part of such interest that was so disposed before his death;

(f) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust in contemplation of or intended to take effect in possession or enjoyment at or after his death, whether such transfer or trust is made or created before or after March 22, 1956, except in case of a bona fide sale for a fair consideration in money or money's worth; any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by a decedent within three (3) years of his death without consideration shall be deemed prima facie to have been made in contemplation of death, within the meaning of this statute, and the burden of proof shall be on the person administering the estate or the beneficiaries of the estate to establish that said transfer was not so made by such decedent;

(g) To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent; to the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership exercisable either alone or in conjunction with any other person;

(h) With respect to any annuity plan of a decedent, other than an annuity described in item (a) of this subsection, to the extent only of the decedent's contribution to such plan or plans.

SOURCES: Codes, 1942, § 9262-04; Laws, 1956, ch. 413, § 4; Laws, 1960, ch. 460; Laws, 1966, ch. 634, § 1; Laws, 1972, ch. 457, § 1; Laws, 1978, ch. 452, § 2; Laws, 1980, ch. 313; Laws, 1988, ch. 549, § 2; Laws, 1989, ch. 521, § 2, eff from and after passage (approved April 4, 1989).

Federal Aspects — Chapter 73, Title 10, United States Code, see 10 USCS § 1431 et seq.

RESEARCH REFERENCES

ALR. Transfer by inter vivos trust of insurance policies upon settlor's life as in contemplation of death for tax purposes. 17 A.L.R.2d 787.

Inheritance, succession or estate tax on property covered by power of appointment as affected by location of property, or residence of parties outside the taxing state or country. 19 A.L.R.2d 1415.

Valuation of corporate stock for purposes of state gift, inheritance or estate tax, as affected by predetermined price in buy-out or first option agreement among stockholders or with corporation. 58 A.L.R.3d 1104.

Devise or bequest pursuant to testator's contractual obligation as subject to estate, succession, or inheritance tax. 59 A.L.R.3d 969.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 156 et seq.

CJS. 85 C.J.S., Taxation § 2192 et seq.

§ 27-9-8. Valuation of farm and closely held business property.

(1)(a) If the decedent was, at the time of his death, a resident of the State of Mississippi, and the executor elects the application of this section and files the agreement referred to in subsection (4)(b), then, for the purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (2), as qualified real property.

(b) The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of subsection (1)(a) with respect to any decedent shall not exceed Five Hundred Thousand Dollars ($500,000.00).

(2)(a) For purposes of this section, the term "qualified real property" means real property located in the State of Mississippi which, on the date of the decedent's death, was being used for a qualified use, but only if:

(i) Fifty percent (50%) or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

1. On the date of the decedent's death, was being used for a qualified use, and

2. Was acquired from or passed from the decedent to a qualified heir of the decedent.

(ii) Twenty-five percent (25%) or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subsections (2)(a)(i)2 and (2)(a)(iii).

(iii) During the period of eight (8) years ending on the date of the decedent's death there have been periods aggregating five (5) years or more during which:

1. Such real property was owned by the decedent or a member of the decedent's family and used for a qualified use; and

2. There was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business; and

(iv) Such real property is designated in the agreement referred to in subsection (4)(b).

(b) For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(i) Use as a farm for farming purposes; or

(ii) Use in a trade or business other than the trade or business of farming.

(c) For purposes of subsection (2)(a), the term "adjusted value" means:

(i) In the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under 26 U.S.C.S. 2053(a)(4); or

(ii) In the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under 26 U.S.C.S. 2053(a)(4).

(3)(a) There is hereby imposed an additional estate tax if, within fifteen (15) years after the decedent's death and before the death of the qualified heir:

(i) The qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family); or

(ii) The qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent.

(b)(i) The amount of the additional tax imposed by subsection (3)(a) with respect to any interest shall be the amount equal to the lesser of:

1. The adjusted tax difference attributable to such interest; or

2. The excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (1).

(ii) For purposes of subsection (3)(b)(i), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate, determined under subsection (3)(b)(iii) as:

1. The excess of the value of such interest for purposes of this chapter, determined without regard to subsection (1), over the value of such interest determined under subsection (1), bears to:

2. A similar excess determined for all qualified real property.

(iii) For purposes of subsection (3)(b)(ii), the term "adjusted tax difference with respect to the estate" means the excess of what would have been the estate tax liability but for subsection (1) over the estate tax liability. For purposes of this subsection, the term "estate tax liability" means the tax imposed by Section 27-9-5 reduced by the exemptions and deductions allowable against such tax.

(iv) For purposes of this subsection, where the qualified heir disposes of a portion of the interest acquired by, or passed to, such heir, or a predecessor qualified heir, or there is a cessation of use of such a portion:

1. The value determined under subsection (1) taken into account under (3)(b)(i)2 with respect to such portion shall be its pro rata share of such value of such interest; and

2. The adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

(c) If the date of the disposition or cessation referred to in subsection (3)(a) occurs more than one hundred twenty (120) months and less than one hundred eighty (180) months after the date of the death of the decedent, the amount of the tax imposed by this subsection shall be reduced (but not below zero) by an amount determined by multiplying the amount of such tax (determined without regard to this paragraph) by a fraction:

(i) The numerator of which is the number of full months after such death in excess of one hundred twenty (120); and

(ii) The denominator of which is sixty (60).

(d) In the case of an interest acquired from (or passing from) any decedent, if subsection (3)(a)(i) or (3)(a)(ii) applies to any portion of an interest, subsection (3)(a)(i) or (3)(a)(ii), as the case may be, shall not apply with respect to the same portion of such interest.

(e) The additional tax imposed by this subsection shall become due and payable on the day which is six (6) months after the date of the disposition or cessation referred to in subsection (3)(a).

(f) The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest.

(g) For purposes of subsection (3)(a)(ii), real property shall cease to be used for the qualified use if:

(i) Such property ceases to be used for the qualified use set forth in subsection (2)(b)(i) or (2)(b)(ii) under which the property qualified under subsection (2); or

(ii) During any period of eight (8) years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating three (3) years or more during which:

1. In the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business; and

2. In the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

(4)(a) The election under this section shall be made not later than the time prescribed for filing the return of tax imposed by Section 27-9-5 (including extensions thereof), and shall be made in such manner as the commissioner shall by regulation prescribe.

(b) The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (3) with respect to such property.

(5) For purposes of this section:

(a) The term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(b) The term "member of the family" means, with respect to any individual, only such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(c) In the case of real property which meets the requirements of subsection (2)(a)(iii), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(d) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(e) The term "farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;

(ii) Handling, drying, packing, grading or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant or operator of the farm regularly produces more than one-half (½) of the commodity so treated; and

(iii)1. The planting, cultivating, caring for or cutting of trees, or

2. The preparation (other than milling) of trees for market.

(f)(i) Except as provided in subsection (5)(f)(ii), the value of a farm for farming purposes shall be determined by dividing:

1. The excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual state and local real estate taxes for such comparable land, by

2. The average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation shall be made on the basis of the five (5) most recent calendar years ending before the date of the decedent's death.

(ii) The formula provided by subsection (5)(f)(i) shall not be used:

1. Where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

2. Where the executor elects to have the value of the farm for farming purposes determined under subsection (5)(g).

(g) In any case to which subsection (5)(f)(i) does not apply, the following factors shall apply in determining the value of any qualified real property:

(i) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration and similar factors;

(ii) The capitalization of the fair rental value of the land for farmland or closely held business purposes;

(iii) Assessed land values if a differential or use value assessment law exists for farmland or closely held business;

(iv) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sale price; and

(v) Any other factor which fairly values the farm or closely held business value of the property.

(6) If qualified real property is disposed of or ceases to be used for a qualified use, then:

(a) The statutory period for the assessment of any additional tax under subsection (3) attributable to such disposition or cessation shall not expire before the expiration of three (3) years from the date the commissioner is notified (in such manner as the commissioner may by regulation prescribe) of such disposition or cessation; and

(b) Such additional tax may be assessed before the expiration of such period of three (3) years notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(7) The commissioner shall prescribe regulations setting forth the application of this section in the case of an interest in a partnership, corporation or trust which, with respect to the decedent, is an interest in a closely held business.

SOURCES: Laws, 1978, ch. 452, § 3, eff from and after July 1, 1978.

§ 27-9-9. Determination of net estate of resident decedent.

[For decedents dying before October 1, 1988, this section shall read as follows:]

For the purpose of the tax in the case of a resident, the value of the net estate shall be determined by deducting from the value of the gross estate:

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck or other casualties, or from theft, when such losses are not compensated by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate, of those dependent upon the decedent, as are allowed by the laws of Mississippi, but not including any income taxes upon the income received after the death of the decedent, or any estate taxes;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under this chapter or any previous estate or inheritance tax act of this state was collected from such estate and if such property is included in the decedent's gross estate;

(3) The amount of all bequests, legacies, devises or gifts to or for the use of the State of Mississippi, or for any political subdivision thereof, for exclusive public purposes; or to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in all cases where such bequests are not prohibited by the Mississippi statute mortmain, provided that all charitable deductions shall be limited to charities located within the United States or its possessions.

[For decedents dying on or after October 1, 1988, this section shall read as follows:]

For the purpose of the tax in the case of a resident, the value of the net estate shall be determined by deducting from the value of the gross estate:

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages (except that any mortgage on real property shall be deducted from the value of such property wherever located), losses incurred during the settlement of the estate arising from fires, storms, shipwreck or other casualties, or from theft, when such losses

are not compensated by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate, of those dependent upon the decedent, as are allowed by the laws of Mississippi, but not including any income taxes upon the income received after the death of the decedent, or any estate taxes;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within two (2) years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under this chapter or any previous estate or inheritance tax act of this state was collected from such estate and if such property is included in the decedent's gross estate;

(3) The amount of all bequests, legacies, devises or gifts to or for the use of the State of Mississippi, or for any political subdivision thereof, for exclusive public purposes; or to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the trustee or trustees exclusively for such religious, charitable, scientific, literary or educational purposes. This deduction shall be made in all cases where such bequests are not prohibited by the Mississippi statute mortmain, provided that all charitable deductions shall be limited to charities located within the United States or its possessions.

SOURCES: Codes, 1942, § 9262-05; Laws, 1956, ch. 413, § 5; Laws, 1958, ch. 558; Laws, 1988, ch. 549, § 3; Laws, 1989, ch. 521, § 3, eff from and after passage (approved April 4, 1989).

Federal Aspects — Internal Revenue Code of 1986 is codified as 26 USCS § 1 et seq.

RESEARCH REFERENCES

ALR. Deductibility of attorney's fees, as administrative expenses and the like, in computing succession or estate tax. 30 A.L.R.2d 1108.

Amount of attorneys' fees deductible in computing succession or estate tax. 62 A.L.R.2d 1148.

Bequests to bar associations as deductible or exempt from estate and succession taxes. 80 A.L.R.2d 1350.

Succession and estate tax: construction of statute or regulation exempting gifts to foreign charitable, educational or religious body on reciprocal basis. 12 A.L.R.3d 918.

Deduction of federal gift tax in computing state inheritance tax. 56 A.L.R.3d 1322.

Devise or bequest pursuant to testator's contractual obligation as subject to estate, succession, or inheritance tax. 59 A.L.R.3d 969.

Valuation of United States Treasury bonds for state inheritance or estate tax purposes. 62 A.L.R.3d 1272.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses. 46 A.L.R. Fed. 246.

Am Jur. 42 Am. Jur. 2d, Inheritance,

Estate, and Gift Taxes § 183 et seq.
9B Am. Jur. Legal Forms 2d, Inheritance, Estate, and Gift Taxes-State, § 145:30 et seq. (will provisions).
CJS. 85 C.J.S., Taxation § 2218 et seq.

§ 27-9-10. Deduction of value of qualified terminable interest property from gross estate in determining net estate; limitation to resident.

(1) In the case of a resident, the value of qualified terminable interest property shall be deducted from the value of the gross estate in determining the net estate.

(a) For purposes of this subsection (1):

(i) The term "qualified terminable interest property" means property: 1. which passes from the decedent; 2. in which the surviving spouse has a qualifying income interest for life; and 3. to which an election under this subsection applies.

(ii) The surviving spouse has a qualifying income interest for life if: 1. the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals; and 2. no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subparagraph (ii) 2. shall not apply to a power exercisable only at or after the death of the surviving spouse.

(iii) The term "property" includes an interest in property.

(iv) A specific portion of property shall be treated as separate property.

(v) An election under this subsection with respect to any property shall be made by the executor on the return of tax imposed by Section 27-9-5. Such an election, once made, shall be irrevocable. Such an election may be made or not made regardless whether an election was not made or made with respect to the property under Section 2056(b)(7)(B)(v) of the Internal Revenue Code of 1986, as now or hereafter amended.

(vi) In the case of an annuity where only the surviving spouse has the right to receive payments before the death of such surviving spouse:

1. The interest of such surviving spouse shall be treated as a qualifying income interest for life; and

2. The executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax imposed by Section 27-9-5. Such an otherwise election, once made, shall be irrevocable. Such an otherwise election may be made or not made regardless whether an election was not made or made with respect to such annuity under Section 2056(b)(7)(C)(ii) of the Internal Revenue Code of 1986, as now or hereafter amended.

(2) In the case of a resident, there shall be deducted from the value of the gross estate in determining the value of the net estate the value of all interests

in property of any kind or nature whatsoever, other than those at subsection (1), that would be deductible under Section 2056 of the Internal Revenue Code of 1986, as now or hereafter amended, if such interests in property were included in the gross estate of the decedent under the provisions of the Internal Revenue Code of 1986, as now or hereafter amended.

(3) A deduction shall be allowed under this section for an interest in property only to the extent that such interest is included in determining the value of the gross estate of the decedent.

(4) The principles of Section 2056(b)(4) of the Internal Revenue Code of 1986, as now or hereafter amended, shall be applied in determining the value of any interest in property to be deducted under this section.

(5) Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same decedent.

(6) This section shall only apply to decedents dying on or after October 1, 1988.

SOURCES: Laws, 1989, ch. 521, § 4, eff from and after passage (approved April 4, 1989), and applicable to decedents dying on or after October 1, 1988.

Cross References — Applicability of this section to the alternative method of valuation of the gross estate, see § 27-9-7.

Application of this section to the determination of the net estate of a nonresident decedent dying on or after October 1, 1988, see § 27-9-15.

Federal Aspects — Section 2056 of the Internal Revenue Code is codified as 26 USCS § 2056.

§ 27-9-11. Specific exemption as to estate of resident decedent.

For the purposes of the tax imposed by this chapter the value of the taxable estate shall be determined in the case of a resident by deducting from the gross estate, after the deductions provided for in Section 27-9-9 have been made, the sum of One Hundred Twenty Thousand Six Hundred Sixty-six Dollars ($120,666.00) in the case of a decedent dying in 1978; the sum of One Hundred Thirty-four Thousand Dollars ($134,000.00) in the case of a decedent dying in 1979; the sum of One Hundred Forty-seven Thousand Three Hundred Thirty-three Dollars ($147,333.00) in the case of a decedent dying in 1980; the sum of One Hundred Sixty-one Thousand Five Hundred Sixty-three Dollars ($161,563.00) in the case of a decedent dying in 1981; and the sum of One Hundred Seventy-five Thousand Six Hundred Twenty-five Dollars ($175,625.00) in the case of a decedent dying in 1982 or any date thereafter prior to October 1, 1988; the sum of Four Hundred Thousand Dollars ($400,000.00) in the case of a decedent dying on or after October 1, 1988, but prior to October 1, 1989; the sum of Five Hundred Thousand Dollars ($500,000.00) in the case of a decedent dying on or after October 1, 1989, but prior to October 1, 1990; the sum of Six Hundred Thousand Dollars ($600,000.00) in the case of a decedent dying on or after October 1, 1990, but prior to January 1, 1998; the sum of Six Hundred Twenty-five Thousand Dollars ($625,000.00) in the case of a decedent dying in 1998; the sum of Six Hundred Fifty Thousand Dollars ($650,000.00) in the case of a decedent dying in 1999; the sum of Six Hundred Seventy-five Thousand Dollars ($675,000.00) in the case of a decedent dying in 2000 or 2001; the amount of the applicable exclusion established under 26 USC 2010, in the case of a decedent dying on or after January 1, 2002.

SOURCES: Codes, 1942, § 9262-06; Laws, 1956, ch. 413, § 6; Laws, 1978, ch. 452, § 4; Laws, 1988, ch. 549, § 4; Laws, 1998, ch. 464, § 1; Laws, 2002, ch. 517, § 1, eff from and after Jan. 1, 2002.

Federal Aspects — Unified credit against estate tax, see 26 USCS § 2010.

RESEARCH REFERENCES

ALR. Bequest to bar associations as deductible or exempt from estate and succession taxes. 80 A.L.R.2d 1350.

Surviving husband or wife of child who died before decedent as "husband" or "wife" within succession tax law provision as to rates or exemptions. 81 A.L.R.2d 1230.

Inter vivos settlement of disputed claim as consideration within statutes excepting transfers for consideration from estate, succession, or inheritance tax. 13 A.L.R.3d 657.

Deduction of federal gift tax in computing state inheritance tax. 56 A.L.R.3d 1322.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 146 et seq.

CJS. 85 C.J.S., Taxation § 2166 et seq.

§ 27-9-13. When intangibles of nonresident are exempt.

The tax imposed under the estate tax law of this state in respect of personal property (except tangible personal property having an actual situs in this state) shall not be payable (a) if the transferor at the time of his death was a resident of a state or territory of the United States, or the District of Columbia, which at the time of his death did not impose a death tax of any character in respect of personal property of residents of this state (except tangible personal property having an actual situs in such state, territory or district), or (b) if the laws of the state, territory or district of the residence of the transferor at the time of his death contained a reciprocal exemption provision under which nonresidents were exempted from said death taxes of every character in respect of personal property (except tangible personal property having an actual situs therein), provided that the state, territory or district of the residence of such nonresident decedents allowed a similar exemption to residents of the state, territory or district of residence of such decedent.

SOURCES: Codes, 1942, § 9262-06.5; Laws, 1960, ch. 462, § 1.

JUDICIAL DECISIONS

1. In general.

With respect to the payment of debts of a partnership after the death of a partner, Mississippi recognizes and applies the doctrine of equitable conversion only so far as is necessary to effectuate the payment of partnership debts and the adjustment of equities between the partners, and under such application, a deceased nonresident's real and personal partnership property located within the state was tangible as opposed to intangible property for the purposes of estate taxation and was not exempt from estate taxes by virtue of the reciprocal exemption statute which expressly excepts tangible personal property having a situs in the state. Tinsley v. State Tax Comm'n, 235 So. 2d 698 (Miss. 1970).

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 144, 145.

§ 27-9-15. Determination of net estate of nonresident decedent.

[For decedents dying before October 1, 1988, this section shall read as follows:]

(1) For the purposes of the tax in the case of a nonresident, the value of the net estate shall be determined by deducting from the value of that part of the gross estate which, at the time of death, is situated in the State of Mississippi that proportion of the deductions specified in subparagraphs 1 and 2 of Section 27-9-9 that the value of such part of the gross estate situated in the State of Mississippi bears to the value of the entire gross estate.

(2) An amount equal to the value of any property forming a part of the gross estate situated in the State of Mississippi of any person who died within two (2) years prior to the death of the decedent, where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received; provided, that this deduction shall be allowed only where an estate tax under this chapter or other laws was paid by or on behalf of the estate of such prior decedent and only in the amount of the value placed by the commissioner on such property in determining the value of the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the state, and not deducted under the provisions of this chapter.

(3) The amount of all bequests, legacies, devises, or transfers, except bona fide sales for a fair consideration in money or money's worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the State of Mississippi or any political subdivision thereof, for exclusive public purposes or to or for the use

of any domestic corporation or association organized and operating exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the State of Mississippi, provided such bequests are not void under the provisions of the Mississippi statutes of mortmain, it being the intention of this chapter to allow charitable deductions to nonresidents only when such deductions are to be used in this state, or are contributed to charitable or educational institutions operating, at least, partly within this state.

[For decedents dying on or after October 1, 1988, this section will read as follows:]

(1) For the purposes of the tax in the case of a nonresident, the value of the net estate shall be determined by deducting from the value of that part of the gross estate which, at the time of death, is situated in the State of Mississippi that proportion of the deductions specified in subsection (1) of Section 27-9-9 that the value of such part of the gross estate situated in the State of Mississippi bears to the value of the entire gross estate.

(2) For the purposes of the tax in the case of a nonresident, the value of the net estate shall be determined by deducting from the value of that part of the gross estate which, at the time of death is situated in the State of Mississippi, the value of property that is included in such part of the gross estate and for which a deduction would be allowed under Section 27-9-10 in the case of a resident.

(3) An amount equal to the value of any property forming a part of the gross estate situated in the State of Mississippi of any person who died within two (2) years prior to the death of the decedent, where such property can be identified as having been received by the decedent from such prior decedent by gift, bequest, devise or inheritance, or which can be identified as having been acquired in exchange for property so received; provided, that this deduction shall be allowed only where an estate tax under this chapter or other laws was paid by or on behalf of the estate of such prior decedent and only in the amount of the value placed by the commissioner on such property in determining the value of the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the state, and not deducted under the provisions of this chapter.

(4) The amount of all bequests, legacies, devises or transfers, except bona fide sales for a fair consideration in money or money's worth, in contemplation of or intended to take effect in possession or enjoyment at or after the decedent's death, to or for the use of the State of Mississippi or any political subdivision thereof, for exclusive public purposes or to or for the use of any domestic corporation or association organized and operating exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private

stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary or educational purposes within the State of Mississippi, provided such bequests are not void under the provisions of the Mississippi statutes of mortmain, it being the intention of this chapter to allow charitable deductions to nonresidents only when such deductions are to be used in this state, or are contributed to charitable or educational institutions operating, at least, partly within this state.

SOURCES: Codes, 1942, § 9262-08; Laws, 1956, ch. 413, § 8; Laws, 1988, ch. 549, § 5; Laws, 1989, ch. 521, § 5, eff from and after passage (approved April 4, 1989).

Cross References — Applicability of this section to the alternative method of valuation of the gross estate, see § 27-9-7.

JUDICIAL DECISIONS

1. In general.

Where a nonresident, who died owning property in Mississippi and elsewhere, gave a substantial portion of his estate to charitable and like organizations located without the state, a deduction for charity based upon the proportion that the gross Mississippi estate bore to the entire gross estate was properly allowed in determining the Mississippi state inheritance tax liability. State Tax Comm'n v. Jennings, 230 Miss. 206, 92 So. 2d 361 (1957).

RESEARCH REFERENCES

ALR. Succession and estate tax: construction of statute or regulation exempting gifts to foreign charitable, educational or religious body on reciprocal basis. 12 A.L.R.3d 918.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 52.

CJS. 85 C.J.S., Taxation §§ 2098, 2099, 2122.

§ 27-9-17. Deductions and exemptions as to estate of nonresident decedent.

The executor of the estate of a nonresident shall have the option of paying an estate tax due under this chapter by paying on the proportion of the estate located in Mississippi, which said proportion bears to the entire estate wheresoever located, and taking the allowable deductions and exemptions in the same proportions, or by paying upon the gross estate located within this state without taking any deductions whatsoever, provided that it shall not be necessary for a nonresident to pay upon any estate unless the gross estate, wheresoever situated, shall be above the amount of the specific exemption provided in Section 27-9-11.

SOURCES: Codes, 1942, § 9262-09; Laws, 1956, ch. 413, § 9; Laws, 1958, ch. 559; Laws, 1978, ch. 452, § 5, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 146 et seq., 183 et seq.

CJS. 85 C.J.S., Taxation § 1413 et seq.

§ 27-9-19. Situs of property.

For the purpose of this tax, all tangible property, real, personal or mixed, located within the State of Mississippi at the date of decedent's death shall be deemed property within this state and shall be reported unless otherwise exempt.

SOURCES: Codes, 1942, § 9262-10; Laws, 1956, ch. 413, § 10; Laws, 1960, ch. 459.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 103 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Inheritance, Estate, and Gift Taxes, Form 56.

CJS. 85 C.J.S., Taxation § 2120 et seq.

§ 27-9-21. Notice.

The executor of an estate of gross value exceeding the amount of the specific exemption provided in Section 27-9-11 shall, within sixty (60) days after the decedent's death or within a like period after qualifying as such, give written notice thereof to the commissioner. Such notice shall show the name of the decedent, the date of death, the name of the attorney and the probable value of the gross estate, also what transfers, if any, the decedent made within two (2) years before his death.

SOURCES: Codes, 1942, § 9262-11; Laws, 1956, ch. 413, § 11; Laws, 1978, ch. 452, § 6, eff from and after July 1, 1978.

§ 27-9-23. Executor to make return.

Within nine (9) months, or any extensions thereof, after the death of the decedent, the executor shall make a return in all cases where the gross estate at the time of death of the decedent exceeds the amount of the specific exemption provided in Section 27-9-11 and in the estate of every nonresident when any part of his gross estate is situated within the State of Mississippi. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such property, and the name of every person holding a legal or beneficial interest therein, and upon notice from the commissioner such persons shall in like manner make a return as to such part of the gross estate. Provided, however, the tax due upon farms and closely held businesses shall be due and payable at the time the federal estate tax return is due and payable.

SOURCES: Codes, 1942, § 9262-13; Laws, 1956, ch. 413, § 13; Laws, 1972, ch. 457, § 2; Laws, 1978, ch. 452, § 7, eff from and after July 1, 1978.

Cross References — Examination of returns, see § 27-9-43.

Penalty for refusal to make return or furnish required information, see § 27-9-57.

JUDICIAL DECISIONS

1. In general.

Executrix was properly surcharged with amount of interest and penalties paid from decedent's estate funds for the late filing of federal and state estate tax returns. Harper v. Harper, 491 So. 2d 189 (Miss. 1986).

§ 27-9-25. No administration; false return; duty of commissioner.

If no administration is granted upon the estate of the decedent, or if no return is filed or if the return contains a false or incorrect statement of material facts, the commissioner or his deputy or agent appointed by him under law, shall make a return and the commissioner shall assess the tax thereon as hereinafter provided by law.

SOURCES: Codes, 1942, § 9262-14; Laws, 1956, ch. 413, § 14.

§ 27-9-27. When tax due.

The tax shall constitute a debt due the state and shall be due and payable nine (9) months after the decedent's death but in any case where the commissioner finds that payment of the tax within such period would impose undue hardship on the estate he may grant an extension or extensions of time for payment not to exceed six (6) months in any one (1) extension from the due date of the return or the expiration of a previous extension, if any, and all unpaid balances shall bear interest at the rate of one-half of one percent (½ of 1%) per month, or major fraction thereof, from the due date until paid.

SOURCES: Codes, 1942, § 9262-15; Laws, 1956, ch. 413, § 15; Laws, 1972, ch. 457, § 3, eff from and after passage (approved May 5, 1972) and applicable to estates of all decedents expiring on or after July 1, 1972.

JUDICIAL DECISIONS

1. In general.

Executrix was properly surcharged with amount of interest and penalties paid from decedent's estate funds for the late filing of federal and state estate tax returns. Harper v. Harper, 491 So. 2d 189 (Miss. 1986).

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 223 et seq.

§ 27-9-29. Receipts; executor's return, discharge.

The commissioner shall grant the person paying the tax a temporary receipt upon the payment of the amount of tax shown to be due on the return or any part thereof, but all returns shall remain subject to investigation and audit by the commissioner, who shall furnish to the person paying the tax or to the executor of the estate a full, final and complete receipt after said investigation has been completed and any additional tax found due has been paid. The commissioner shall have a period of four (4) years after the filing of said return within which time to make such investigation but in the event that the executor shall furnish to the commissioner a statement from the federal government that all federal estate taxes have been paid and giving the value of the property reported to and accepted by the federal government, the commissioner may at that time furnish the executor a final receipt if all estate taxes have been paid to the State of Mississippi upon the same basis of valuation as paid to the federal government. All valuations accepted by the federal government shall be prima facie correct for the purpose of the administration of this chapter, and the duty is placed upon the executor of the estate to furnish to the commissioner a copy of all valuations changed or accepted by the federal government for the purpose of administering the federal estate tax statute.

In the event that no estate tax return is filed, the commissioner shall have a period of ten (10) years from the due date of the return to investigate said estate and to assess estate tax.

SOURCES: Codes, 1942, § 9262-16; Laws, 1956, ch. 413, § 16.

§ 27-9-31. Repealed.

Repealed by Laws of 1988, ch. 549, § 8, eff from and after October 1, 1988. [Codes, 1942, § 9262-17; Laws, 1956, ch. 413, § 17]

Editor's Note — Former § 27-9-31 related to the collection of an estate tax.

§ 27-9-33. Party paying reimbursed.

If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of, any person other than the executor in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts, or other charges against the estate, it being the purpose and intent of this section that so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the commissioner shall not be charged with enforcing contribution from any person or persons.

SOURCES: Codes, 1942, § 9262-18; Laws, 1956, ch. 413, § 18.

Cross References — Action for recovery of taxes, see § 27-9-39.
Uniform Estate Tax Apportionment Act, see §§ 27-10-1 et seq.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 224 et seq.

9B Am. Jur. Legal Forms 2d, Inheritance, Estate, and Gift Taxes — State, §§ 145:30 et seq., 145:40 et seq.

CJS. 85 C.J.S., Taxation §§ 2182-2185.

§ 27-9-35. Lien.

Unless the tax is sooner paid in full, it shall be a lien for four (4) years from the date of filing the return upon the gross estate of the decedent when an estate tax return has been filed with the commissioner, but in cases where no estate tax return is filed the lien shall remain in full force and effect for ten (10) years from the due date of the return unless the tax is sooner paid in full; except that such part of the gross estate as is used for payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof shall be divested of such lien. If the commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate or waiver releasing any or all property of such estate from the lien herein imposed.

SOURCES: Codes, 1942, § 9262-19; Laws, 1956, ch. 413, § 19.

Cross References — Lien of assessment by commissioner, see § 27-9-45.
Uniform Estate Tax Apportionment Act, see § 27-10-1 et seq.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 228.

14 Am. Jur. Pl & Pr Forms (Rev), Inheritance, Estate, and Gift Taxes, Form 144.

§ 27-9-37. Personal liability of the executor.

Every executor, administrator, or assignee, or other person, who pays any debts, except as hereinbefore provided for, due by the person or estate from whom or for which he acts, before he satisfies and pays the tax due the State of Mississippi under this law, from such person or estate, shall become answerable in his own person and estate for the tax so due the state, or so much thereof as may remain due and unpaid, to the full extent of the full value of any property belonging to such person or estate which may come into his hands, custody, or control, and the executor shall in all instances be liable on his bond for the payment of the estate tax, whether the estate has been closed by the chancery court administering same or not.

SOURCES: Codes, 1942, § 9262-20; Laws, 1956, ch. 413, § 20.

Cross References — Personal liability for incorrect returns, see § 27-9-43.

Uniform Estate Tax Apportionment Act, see §§ 27-10-1 et seq.

JUDICIAL DECISIONS

1. In general.

Executrix was properly surcharged with amount of interest and penalties paid from decedent's estate funds for the late filing of federal and state estate tax returns. Harper v. Harper, 491 So. 2d 189 (Miss. 1986).

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 226.

CJS. 85 C.J.S., Taxation §§ 2188, 2189.

§ 27-9-39. Action for recovery of taxes; applicable laws.

Action may be brought at any time by the commissioner or the Attorney General of the state in the name of the commissioner to recover the amount of any tax, penalties and interest due under this chapter. Such action shall be brought in the county and district where the taxpayer resides.

All administrative provisions of the Mississippi Sales Tax Law shall apply with like force and effect to all persons liable for taxes under the provisions of this chapter, and the commissioner and the State Tax Commission shall exercise all power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in said Mississippi Sales Tax Law. In case of conflict between the provisions of this chapter and any provision in the Mississippi Sales Tax Law, then the provisions of this chapter shall control.

SOURCES: Codes, 1942, § 9262-21; Laws, 1956, ch. 413, § 21; Laws, 1988, ch. 549, § 6, eff from and after October 1, 1988.

Cross References — Suits for taxes by Attorney General, district attorneys, or county attorneys, see § 7-5-55.

State Tax Commission as meaning Department of Revenue, see § 27-9-3.

Uniform Estate Tax Apportionment Act, see § 27-10-1 et seq.

Action to recover tax, penalty and interest, see § 27-35-5.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 233 et seq.

14 Am. Jur. Pl & Pr Forms (Rev), Inheritance, Estate, and Gift Taxes, Forms 121-127.

3 Am. Jur. Legal Forms 2d, Attorneys at Law § 30:40.

§ 27-9-41. Tax upon settlement of executor's account.

(1) No final account of an executor shall be allowed by any court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this chapter upon said executor which have become payable, have been paid. The certificate of the commissioner and the receipt for the amount of the tax therein certified, which must become a part of the court record, shall be conclusive as to the payment of the tax to the extent of said certificate.

(2) For the purpose of facilitating the settlement and distribution of estates held by executors, the commissioner, with the approval of the attorney general may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such executor under the provisions of this chapter, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

SOURCES: Codes, 1942, § 9262-22; Laws, 1956, ch. 413, § 22; Laws, 1988, ch. 549, § 7, eff from and after October 1, 1988.

Cross References — Payment of income taxes as prerequisite to approval of final account, see § 27-7-69.

JUDICIAL DECISIONS

1. In general.

Approval of a final account without a showing of payment of taxes will not be disapproved by the supreme court; but the case will be remanded with a direction that the account be surcharged with any taxes found due. Riegelhaupt v. Ostroffsky, 237 Miss. 521, 115 So. 2d 331 (1959).

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Inheritance, Estate, and Gift Taxes, Form 88.

§ 27-9-43. Examination of returns.

(1) As soon as practicable after the return is filed, the commissioner shall examine it, if it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. If the amount already paid exceeds that which should have been paid on the basis of the

return so recomputed, the excess so paid shall be credited or refunded to the taxpayer in accordance with the provisions of this chapter.

(2) If the amount already paid is less than the amount which should have been paid, the difference, together with interest thereon at the rate of one-half of one percent (½ of 1%) per month from the time the tax was due, shall be paid within sixty (60) days upon written notice and demand by the commissioner. The department, for good reason shown, may waive all or any part of the interest imposed pursuant to this subsection.

(3) If any part of the deficiency is due to negligence or intentional disregard to authorized rules and regulations with knowledge thereof but without intent to defraud, there shall be added as damages ten percent (10%) of the total amount of the deficiency in the tax, and interest in such a case shall be collected at the rate of one percent (1%) per month on the amount of such deficiency in the tax from the time it was due, which interest and damages shall become due and payable upon notice and demand by the commissioner and such executor shall be liable to the estate personally and on his official bond, if any, for any damages accruing under the above provisions through his negligence or willful neglect.

SOURCES: Codes, 1942, § 9262-23; Laws, 1956, ch. 413, § 23; Laws, 1995, ch. 384, § 1; Laws, 2009, ch. 492, § 50, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Refund of tax, see § 27-9-49.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Pl & Pr Forms (Rev), Inheritance, Estate, and Gift Taxes, Forms 121-127.

§ 27-9-45. Additional taxes; assessments following determination of taxpayer's contest with federal government.

If no return is made by an executor required to make returns, as provided herein, the commissioner shall give written notice by mail to such executor to make such returns within thirty (30) days from the date of such notice and if such executor shall fail or refuse to make such returns as he may be required to make in such notice, then such return shall be made by the commissioner from the best information available and such return shall be prima facie correct for the purposes of this chapter, and the amount of tax shown due thereby shall be a lien against all the property of the decedent until discharged by payment and if any payment be not made within sixty (60) days after the demand therefor by the commissioner, there shall be added fifty percent (50%) as damages, together with interest at the rate of one percent (1%) per month on the tax from the time such tax was due. If such tax be paid within sixty (60) days after notice by the commissioner, then there shall be added ten percent (10%) as damages and interest at the rate of one percent (1%) from the time such tax was due until paid; however, in the event the executor in answer to the notice from the commissioner shall state that he is not required under the law to make such returns, the commissioner shall investigate that question fully before proceeding further under this section.

The commissioner's authority to make collection of estate tax shall be determined at the end of four (4) years from the date of filing of estate tax return, but in the event that no return is filed, the commissioner's authority to make a return from any information available at that time shall be terminated at the end of ten (10) years from the due date of the return.

In the event the federal estate tax or any part thereof is being contested with the federal government, the commissioner's right to make an additional assessment based on final determination of the federal estate tax assessment shall be in force for a period of two (2) years after the determination.

SOURCES: Codes, 1942, § 9262-24; Laws, 1956, ch. 413, § 24; Laws, 1960, ch. 461; Laws, 2009, ch. 492, § 51, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

§ 27-9-47. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

Editor's Note — Former § 27-9-47 provided for hearings and appeals from certain actions of the State Tax Commission.

§ 27-9-49. Refunds; appeal of initial denial.

If, upon examination of any return made under this chapter, it appears that an amount of estate tax, interest or penalties has been paid in excess of that properly due, then the amount in excess shall be immediately refunded to the executor at such time as the commissioner has completed his investigation and has determined the correct estate tax liability of the estate.

If the liability of an estate for estate taxes is contested with the federal government and, as a result of that contest, the commissioner determines that the Mississippi estate tax, interest or penalties have been overpaid, then the overpayment shall be promptly refunded to the executor upon receipt of the federal closing letter or the decision of the tax court in lieu of the federal closing letter.

A refund of estate tax, interest or penalties made pursuant to this chapter shall bear interest at the rate of one-half of one percent (½ of 1%) per month, or major fraction thereof, for the period which is the later of the due date of the estate tax return inclusive of all approved extensions, or the final payment of the estate tax, interest or penalty and continuing until the date the commission has completed its investigation and has determined that a refund is due.

If any claim for overpayment of estate tax, interest or penalty is denied, the executor may appeal such decision to the board of review as provided by law.

SOURCES: Codes, 1942, § 9262-30; Laws, 1956, ch. 413, § 30; Laws, 1996, ch. 457, § 1; Laws, 2005, ch. 499, § 18, eff from and after July 1, 2005.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1996, ch. 457, § 2, effective April 2, 1996, provides as follows:

"SECTION 2. Section 1 of this act applies to all refunds made or claims for refunds pending on or after January 1, 1995."

Cross References — Refund of taxes, generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

ALR. Refund of state inheritance or estate tax where claims are proven against estate after tax was paid. 63 A.L.R.3d 924.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 303-307.

14 Am. Jur. Pl & Pr Forms (Rev), Inheritance, Estate, and Gift Taxes, Forms 132, 134-137.

§ 27-9-51. Administration.

(1) The commissioner shall have jurisdiction and be charged with the administration and enforcement of the provisions of the estate tax statutes under this chapter.

(2) The commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, is hereby authorized, by any agent designated by the commissioner with the approval of the governor for that purpose, to examine any books, papers, records, or memoranda, bearing upon the matter required to be included in the return, and may require the attendance of persons rendering return or of any officer or employee of such persons, or of any person having knowledge in the premises at the office of the commissioner, Woolfolk State Office Building, Jackson, Mississippi, and may take his testimony with reference to the matters required by law to be included in such return, with power to administer oaths to such person or persons.

(3) If any person summoned to appear to testify, or produce books, papers, or other data, shall refuse to do so, the chancery court for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(4) The commissioner, with the approval of the governor, may appoint and remove such officers, agents, deputies, clerks, and employees, as he may deem necessary, such persons to have such duties and powers as the commissioner may from time to time prescribe. The salaries of all officers, agents, and employees employed by the commissioner shall be such as he may prescribe, not to exceed such amounts as may be appropriated by the legislature, and the members of the commission and such officers, agents, and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in performance of their duties, not to exceed the amount appropriated therefor by the legislature.

(5) The commissioner may require such of the officers, agents, and employees as he may designate to give bond for the faithful performance of their duties in such form and with such sureties as he may determine, and all premiums on such bonds shall be paid by the commissioner out of the moneys appropriated for that purpose.

(6) All officers empowered by law to administer oaths and the members of the commission and such officers as it may designate shall have power to administer an oath to any person or to take the acknowledgment of any person

in respect of any return or report required, or the rules and regulations of the commissioner.

(7) All agents of the commissioner shall have for identification purposes proper credentials signed by the chairman of the commission and countersigned by the governor.

(8) The commissioner, with the approval of the governor, shall prepare and publish annually, statistics reasonably available with respect to the operation of this law, including classification of taxpayers and of the value of estates, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

SOURCES: Codes, 1942, § 9262-27; Laws, 1956, ch. 413, § 27.

Cross References — Subpoena for witnesses, generally, see §§ 13-3-93, 99-9-11.

§ 27-9-53. Regulations.

The commissioner may from time to time make such rules and regulations not inconsistent with this chapter as he may deem necessary to enforce its provisions and may prescribe forms to be used in the administration of this chapter.

SOURCES: Codes, 1942, § 9262-28; Laws, 1956, ch. 413, § 28.

§ 27-9-55. Secrecy required.

(1) Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the members of the commission, any deputy, agent, clerk, or other officer, or employee, to divulge or make known in any manner the value of any estate or any particulars set forth or disclosed in any report or return required. Nothing herein shall be construed to prohibit the publication of statistics, so classified so as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this chapter. Reports and returns shall be preserved in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the director of the department of archives and history.

(2) Notwithstanding the provisions of this section, the commissioner may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing an estate tax similar to that imposed by this chapter, or the authorized representative of either such officer, to inspect the estate tax returns of any individual, or may furnish to such officer or his authorized representatives an abstract of the return for estate tax of any executor or supply him with information concerning any item contained in any return, or disclosed by the report of any investigation of the return of any

executor, but such permission shall be granted, or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

SOURCES: Codes, 1942, § 9262-29; Laws, 1956, ch. 413, § 29; Laws, 1981, ch. 501, § 22, eff from and after July 1, 1981.

Cross References — For requirement that consent of director of department of archives and history be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Archives and Records Management Law, generally, see § 25-59-21 et seq.

Disclosure and confidentiality of public records, generally, see § 25-59-27.

Penalty for violation of secrecy requirement, see § 27-9-57.

§ 27-9-57. Penalties.

(1) Any person making the affidavit required by this chapter who shall knowingly swear falsely shall be guilty of perjury and, upon conviction, shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years.

(2) If any executor, corporation, or fiduciary, or any officer or employee of such, required under this chapter to pay any tax, shall wilfully refuse to make any return, or supply any information or exhibit any books or records, when requested to do so by the commissioner or any agent designated by the commissioner, whether with reference to their own returns or not, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person violating the provisions of Section 27-9-55 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender be an officer or employee of the state he shall be dismissed from office and be incapable of holding any public office in this state for a period of five (5) years thereafter.

SOURCES: Codes, 1942, §§ 9262-25, 9262-29; Laws, 1956, ch. 413, §§ 25, 29.

Cross References — Penalty for incorrect returns, see § 27-9-43.

Penalty in connection with assessment by commissioner, see § 27-9-45.

Uniform Estate Tax Apportionment Act, see § 27-10-1 et seq.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 230 et seq.

§ 27-9-59. Chapter in force until federal estate tax repealed.

The estate tax law of this state shall remain in force and effect so long as the government of the United States retains in full force and effect as a part of the revenue laws of the United States a federal estate tax, and this statute shall be repealed as and when the government of the United States ceases to impose an estate tax. Wherever possible the terms of this statute shall be construed in conformity with similar provisions of the estate tax law of the United States.

SOURCES: Codes, 1942, § 9262-07; Laws, 1956, ch. 413, § 7.

§ 27-9-61. Prior claims not affected by chapter.

The adoption of the estate tax laws in this chapter shall in nowise affect any right belonging to the state or suit, prosecution or proceeding pending at the time of its adoption, or any right which the state may have under the estate tax statutes of the state prior to or at the time of the taking effect of this chapter, whether suit or other proceedings have been actually begun or may hereafter be instituted. But as to the rights of the state and all parties interested as to estates of persons dying, or disposing of property, prior to the time of taking effect of this chapter, such right or liability shall survive and be enforced the same as if this chapter had not become effective.

SOURCES: Codes, 1942, § 9262-31; Laws, 1956, ch. 413, § 31.

CHAPTER 10

Uniform Estate Tax Apportionment Act

Sec.	
27-10-1.	Short title.
27-10-3.	Uniformity of interpretation.
27-10-5.	Definitions.
27-10-7.	Apportionment.
27-10-9.	Procedures for determining apportionment.
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27-10-17.	Exoneration of fiduciary.
27-10-19.	Action by nonresident, reciprocity.
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§ 27-10-1. Short title.

This chapter may be cited as the Uniform Estate Tax Apportionment Act.

SOURCES: Laws, 1994, ch. 348, § 11, eff from and after January 1, 1995.

§ 27-10-3. Uniformity of interpretation.

This chapter shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

SOURCES: Laws, 1994, ch. 348, § 10, eff from and after January 1, 1995.

§ 27-10-5. Definitions.

In this chapter:

(a) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(b) "Fiduciary" means executor, administrator of any description, and trustee;

(c) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(d) "Person interested in the estate" means any person including an executor, administrator, guardian, conservator or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

(e) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(f) "Tax" means the federal estate tax and the additional estate tax imposed by the State of Mississippi and interest and penalties imposed in addition to the tax.

SOURCES: Laws, 1994, ch. 348, § 1, eff from and after January 1, 1995.

Cross References — Imposition of state estate taxes, see § 27-9-1 et seq.

JUDICIAL DECISIONS

1. "Person interested in the estate."

Decedent's son met the definition of "person interested in the estate" as provided in Miss. Code Ann. § 27-10-5(d), as he received an interest from the decedent's estate while alive; as such, the appellate court concluded that he was a person interested in the estate as defined by Miss. Code Ann. § 27-10-5(d); therefore, he had to pay his pro rata share of the estate taxes as directed by the will. Necaise v. Seay (In re Estate of Necaise), 915 So. 2d 449 (Miss. 2005).

RESEARCH REFERENCES

ALR. Construction and effect of will provisions expressly relating to the burden of estate or inheritance taxes. 69 A.L.R.3d 122.

Construction and effect of will provisions ot expressly mentioning payment of death taxes but relied on as affecting the burden of estate or inheritance taxes. 70 A.L.R.3d 630.

Construction and application of statutes apportioning or prorating estate taxes. 71 A.L.R.3d 247.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 282, 283, 285, 286, 288-291, 300.

CJS. 85 C.J.S., Taxation §§ 2182-2185.

§ 27-10-7. Apportionment.

Except as provided in Section 27-10-17 and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this chapter, the method described in the will controls.

SOURCES: Laws, 1994, ch. 348, § 2, eff from and after January 1, 1995.

Cross References — Authority of chancery court to direct apportionment of expenses different than specified in this section if apportionment under this section is inequitable, see § 27-10-9.

JUDICIAL DECISIONS

1. Intent of the decedent.
2. Uniform estate tax apportionment.

1. Intent of the decedent.
Estate taxes were required to be apportioned unless the decedent's will directed otherwise; decedent's directive that her executor pay all of her legal debts indicated no intent whatsoever regarding the apportionment of estate taxes. In re Will & Estate of Lawson v. Brantley, 792 So. 2d 977 (Miss. 2001).

2. Uniform estate tax apportionment.
Decedent's son met the definition of "person interested in the estate" as provided in Miss. Code Ann. § 27-10-5(d), as he received an interest from the decedent's estate while alive; as such, the appellate court concluded that he was a person interested in the estate as defined by Miss. Code Ann. § 27-10-5(d); therefore, he had to pay his pro rata share of the estate taxes as directed by the will pursuant to Miss. Code Ann. § 27-10-7. Necaise v. Seay (In re Estate of Necaise), 915 So. 2d 449 (Miss. 2005).

RESEARCH REFERENCES

ALR. Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument. 67 A.L.R.3d 273.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 199.

17A Am. Jur. Legal Forms 2d, Trusts § 251:858 (payment of estate and inheritance taxes — apportionment between income and principal); § 251:859 (payment of estate and inheritance taxes — apportionment between trust estate and testator's residuary estate).

§ 27-10-9. Procedures for determining apportionment.

(1) The chancery court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax.

(2) If the chancery court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in Section 27-10-3 and charged and collected as a part of the tax apportioned. If the chancery court finds it is inequitable to apportion the expenses as provided in Section 27-10-3, it may direct apportionment thereof equitably.

(4) If the chancery court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance

with this chapter, the determination of the chancery court in respect thereto is prima facie correct.

SOURCES: Laws, 1994, ch. 348, § 3, eff from and after January 1, 1995.

RESEARCH REFERENCES

ALR. What law governs apportionment of estate taxes among persons interested in estate. 16 A.L.R.2d 1282.

Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument. 67 A.L.R.3d 273.

Construction and application of statutes apportioning or prorating estate taxes. 71 A.L.R.3d 247.

Remedies and practice under estate tax apportionment statutes. 71 A.L.R.3d 371.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 258 (exoneration by will), 259 (gifts of residuary estate), 269 (what death taxes affected by tax clause), 296 et seq. (apportionment proceedings).

17A Am. Jur. Legal Forms 2d, Trusts § 251:858 (payment of estate and inheritance taxes — apportionment between income and principal); § 251:859 (payment of estate and inheritance taxes — apportionment between trust estate and testator's residuary estate).

CJS. 85 C.J.S., Taxation §§ 2182-2185.

§ 27-10-11. Method of proration.

(1) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his possession, distributable to any person interested in the estate, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or the other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter.

(2) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the chancery court having jurisdiction of the administration of the estate.

SOURCES: Laws, 1994, ch. 348, § 4, eff from and after January 1, 1995.

RESEARCH REFERENCES

ALR. Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument. 67 A.L.R.3d 273.

Construction and application of statutes apportioning or prorating estate taxes. 71 A.L.R.3d 247.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 199, 268, 269, 272, 273.

17A Am. Jur. Legal Forms 2d, Trusts § 251:858 (payment of estate and inheritance taxes — apportionment between income and principal); § 251:859 (payment of estate and inheritance taxes — apportionment between trust estate and testator's residuary estate).

CJS. 85 C.J.S., Taxation §§ 2182-2185.

§ 27-10-13. Allowance for exemptions, deductions and credits.

(1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction the tax apportionable against the present interest shall be paid from principal.

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chapter and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1986, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

SOURCES: Laws, 1994, ch. 348, § 5, eff from and after January 1, 1995.

Federal Aspects — Section 2053(d) of the Internal Revenue Code, see 26 USCS 2053(d).

RESEARCH REFERENCES

ALR. Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument. 67 A.L.R.3d 273.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes § 199.

17A Am. Jur. Legal Forms 2d, Trusts § 251:858 (payment of estate and inheritance taxes — apportionment between income and principal); § 251:859 (payment of estate and inheritance taxes — apportionment between trust estate and testator's residuary estate).

CJS. 85 C.J.S., Taxation §§ 2182-2185.

§ 27-10-15. No apportionment between temporary and remainder interests.

No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

SOURCES: Laws, 1994, ch. 348, § 6, eff from and after January 1, 1995.

RESEARCH REFERENCES

ALR. Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Liability of income beneficiary of trust for proportionate share of estate or inheritance tax in absence of specific direction in statute, will, or other instrument. 67 A.L.R.3d 273.

Construction and application of statutes apportioning or prorating estate taxes. 71 A.L.R.3d 247.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 260 et seq., 280 et seq.

17A Am. Jur. Legal Forms 2d, Trusts § 251:858 (payment of estate and inheritance taxes — apportionment between income and principal); § 251:859 (payment of estate and inheritance taxes — apportionment between trust estate and testator's residuary estate).

CJS. 85 C.J.S., Taxation §§ 2182-2185.

§ 27-10-17. Exoneration of fiduciary.

Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the three (3) months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three-months period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

SOURCES: Laws, 1994, ch. 348, § 7, eff from and after January 1, 1995.

JUDICIAL DECISIONS

1. Allocation of estate taxes.

Decedent's will dictated that the son owed a pro rata share of the estate taxes for the lifetime gift made to him, and Miss. Code Ann. § 27-10-17 allowed the testator to determine how the tax burden would be allocated between recipients of gifts and beneficiaries. Necaise v. Seay (In re Estate of Necaise), 915 So. 2d 449 (Miss. 2005).

RESEARCH REFERENCES

ALR. Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Construction and application of statutes apportioning or prorating estate taxes. 71 A.L.R.3d 247.

Am Jur. 42 Am. Jur. 2d, Inheritance, Estate, and Gift Taxes §§ 199, 271, 272.

17A Am. Jur. Legal Forms 2d, Trusts § 251:858 (payment of estate and inheritance taxes — apportionment between income and principal); § 251:859 (payment of estate and inheritance taxes — apportionment between trust estate and testator's residuary estate).

§ 27-10-19. Action by nonresident, reciprocity.

Subject to this section a fiduciary acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

SOURCES: Laws, 1994, ch. 348, § 8, eff from and after January 1, 1995.

§ 27-10-21. Coordination with federal law.

If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the Federal Estate Tax Law, the liabilities imposed by the federal law will control and the balance of this chapter shall apply as if the resulting liabilities had been prescribed herein.

SOURCES: Laws, 1994, ch. 348, § 9, eff from and after January 1, 1995.

Cross References — Apportionment of tax, except as provided in this section, see § 27-10-7.

RESEARCH REFERENCES

ALR. Construction and application of statutes apportioning or prorating estate taxes. 71 A.L.R.3d 247.

§ 27-10-23. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 1994, ch. 348, § 12, eff from and after January 1, 1995.

§ 27-10-25. Time of application of chapter.

This chapter does not apply to taxes due on account of the death of decedents dying prior to January 1, 1995.

SOURCES: Laws, 1994, ch. 348, § 13, eff from and after January 1, 1995.

CHAPTER 11

Amusement Tax

[Repealed]

§§ 27-11-1 through 27-11-55. Repealed.

Repealed by Laws of 1989, ch. 479, § 2, eff from and after July 1, 1989.

§ 27-11-1 through § 27-11-55. [Codes, 1942, §§ 9055-9085.5; Laws 1934, ch. 124; Laws, 1940, ch. 117; Laws, 1946, ch. 291, §§ 1-4; Laws, 1952, ch. 418, § 1; Laws, 1954, ch. 367, §§ 1, 2; Laws, 1955, Ex. Sess. ch. 108, § 1; Laws, 1958, ch. 552; Laws, 1962, ch. 587, §§ 1, 2; Laws, 1966, ch. 627, § 1; Laws, 1972, ch. 339, § 1; Laws, 1974, ch. 561; Laws, 1976, ch. 403; Laws, 1977, ch. 384, §§ 1, 2; Laws, 1977, ch. 499; Laws, 1978, ch. 501, §§ 2-4; Laws, 1979, ch. 428, § 1]

Editor's Note — Former §§ 27-11-1 through 27-11-55 contained provisions of the Emergency Amusement Revenue Law of 1934.

CHAPTER 13

Corporation Franchise Tax

Sec.
27-13-1. Definitions [Repealed effective January 1, 2028].
27-13-3. Counties and municipalities precluded from levying certain taxes [Repealed effective January 1, 2028].
27-13-5. Tax on domestic corporations [Repealed effective January 1, 2028].
27-13-7. Tax on foreign corporations [Repealed effective January 1, 2028].
27-13-8. Tax on qualified subchapter S subsidiaries; tax on single member limited liability companies [Repealed effective January 1, 2028].
27-13-9. Basis of valuation [Repealed effective January 1, 2028].
27-13-11. Book value [Repealed effective January 1, 2028].
27-13-13. Multistate corporations [Repealed effective January 1, 2028].
27-13-15. Repealed.
27-13-17. Accrual, payment and reporting of tax [Repealed effective January 1, 2028].
27-13-19. Verification of return; surety of foreign corporation; return made by receiver, trustee in bankruptcy or assignee [Repealed effective January 1, 2028].
27-13-21. Extension of time to file return and pay tax [Repealed effective January 1, 2028].
27-13-23. Delinquent taxes; failure to file return [Repealed effective January 1, 2028].
27-13-25. Additional taxes or refunds [Repealed effective January 1, 2028].
27-13-27. Request for administrative dissolution of corporation or organization or for revocation of certificate of authority; setting aside of administrative dissolution or revocation of certificate of authority [Repealed effective January 1, 2028].
27-13-29. Enrolling a judgment [Repealed effective January 1, 2028].
27-13-31. Warrant for collection of tax [Repealed effective January 1, 2028].
27-13-33. Jeopardy assessment and warrant [Repealed effective January 1, 2028].
27-13-35. Execution by sheriff or special agent; fees; disposition of property [Repealed effective January 1, 2028].
27-13-37. Commissioner may bid at sales [Repealed effective January 1, 2028].
27-13-39. Alias executions [Repealed effective January 1, 2028].
27-13-41. Sheriff and special agent not personally liable [Repealed effective January 1, 2028].
27-13-43 and 27-13-45. Repealed
27-13-47. Refunds [Repealed effective January 1, 2028].
27-13-49. Limitations of actions [Repealed effective January 1, 2028].
27-13-51. Tax as a personal debt; joint and several liability for subchapter S subsidiaries, certain limited liability companies and entities required to file for federal income tax purposes on the activity of those subsidiaries and companies [Repealed effective January 1, 2028].
27-13-53. Departments of state government authorized to furnish information to chairman of State Tax Commission [Repealed effective January 1, 2028].
27-13-55. Disposition of funds [Repealed effective January 1, 2028].
27-13-57. Information kept secret; release of certain information under certain circumstances [Repealed effective January 1, 2028].
27-13-59. Commissioner to give receipt [Repealed effective January 1, 2028].
27-13-61. Fraudulent reports [Repealed effective January 1, 2028].

27-13-63. Corporations and organizations exempt from tax [Repealed effective January 1, 2028].
27-13-65. Administration of chapter [Repealed effective January 1, 2028].
27-13-67. Regulations [Repealed effective January 1, 2028].

§ 27-13-1. Definitions [Repealed effective January 1, 2028].

The words, terms and phrases when used in this chapter shall have the following meanings ascribed to them:

(a) "Commission," "State Tax Commission," "Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner," "Chairman of the State Tax Commission," "chairman of the commission" or "chairman" means the Commissioner of Revenue of the Department of Revenue.

(c) "Taxpayer" means any corporation, association or joint-stock company liable for or having paid any tax to the State of Mississippi under the provisions of this chapter or any corporation, association or joint-stock company subject to the provisions of this chapter.

(d) "Domestic," when applied to a corporation or association, means created or organized under the laws of the State of Mississippi.

(e) "Foreign," when applied to a corporation or association, means created or organized under some authority other than the laws of the State of Mississippi.

(f) "Accounting period" or "accounting year" means a period of twelve (12) months ending on the last day of the month of December, known as a calendar year, or a period of twelve (12) months ending on the last day of any month other than December, known as a fiscal year.

(g) "Corporation," "association" or "joint-stock company" means and includes each and every form of organization for pecuniary gain, having authorized capital stock, whether with or without par value, having privileges not possessed by individuals or partnerships; and whether organized with or without statutory authority; and may be referred to as "organizations." When any form of organization is treated as a corporation for federal income tax purposes it shall be treated as a corporation for purposes of this chapter.

(h) "Doing business" means and includes each and every act, power or privilege, including any income-producing activities, exercised or enjoyed in this state as an incident to, or by virtue of, the powers and privileges acquired by the nature of such organization, whether the form of existence be corporate, associate, joint-stock company or common law trust. An entity that is required to file and report for federal income tax purposes the activity conducted in Mississippi of a qualified subchapter S subsidiary shall be considered to be doing business in this state for purposes of this chapter. An entity that is required to file and report for federal income tax purposes on the activity conducted in Mississippi of a single member limited liability company which is not classified as a corporation, and thus disregarded, shall be considered to be doing business in this state for purposes of this chapter.

(i) "Holding corporation" means a corporation, association or joint-stock company: (i) owning capital stock of one or more other corporations, associations or joint-stock companies, which stock ownership represents at least eighty percent (80%) of the value and at least eighty percent (80%) of the combined voting power of all classes of issued and outstanding capital stock of such other corporation, association or joint-stock company; except that for purposes of this definition the term "stock" does not include nonvoting stock which is limited and preferred as to dividends; and (ii) deriving at least ninety-five percent (95%) of its gross receipts from dividends, interest, royalties, rents, services provided to members of an affiliated group (as defined in Section 27-7-37(2)(d)) to the extent of the cost of providing such services, and from such additional sources as the commissioner may specify by regulation. The definition of the various sources of gross receipts referred to herein shall be governed by applicable provisions of Chapter 7, Title 27, Mississippi Code of 1972, and regulations thereunder and shall include only passive categories of receipts in the computation of gross receipts.

(j) "Subsidiary corporation" means a corporation, association or joint-stock company of which at least eighty percent (80%) of the value and at least eighty percent (80%) of the combined voting power of all classes of its issued and outstanding capital stock is owned by a holding corporation, except that for purposes of this definition the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(k) "Stock or securities" means any share of stock, certificate of stock, or interest in a corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

SOURCES: Codes, 1942, §§ 9312, 9315; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 1; Laws, 1966, ch. 635, § 1; Laws, 1975, ch. 467, § 1; Laws, 1993, ch. 350, § 1; Laws, 1997, ch. 504, § 1; Laws, 2000, ch. 479, § 2; Laws, 2009, ch. 492, § 52, eff from and after July 1, 2010.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

Provision that an investment trust shall be deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Private trust company payments of corporate franchise taxes, see § 81-27-4.302.

JUDICIAL DECISIONS

1. In general.

The capital of a corporation is its tangibles, the aggregate of its property and assets of all kinds, while its capital stock is the evidence of rights in such property. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

By the legislature's clear definition of "doing business," a foreign corporation formed for profit is doing business in Mississippi and is taxable as soon as it gets ready to be active by having property there and enjoying the protection of the state for it, and qualifies formally by filing its charter and naming its agent for service of process. Stone v. Interstate Natural Gas Co., 103 F.2d 544 (5th Cir. 1939), aff'd, 308 U.S. 522, 60 S. Ct. 292, 84 L. Ed. 442 (1939), reh'g denied, 308 U.S. 639, 60 S. Ct. 381, 84 L. Ed. 530 (1940).

RESEARCH REFERENCES

ALR. Validity, under import-export clause of Federal Constitution, of state tax on corporations. 20 A.L.R.2d 152.

§ 27-13-3. Counties and municipalities precluded from levying certain taxes [Repealed effective January 1, 2028].

Counties and municipalities shall not levy a form or franchise tax on the organization taxed under this chapter.

SOURCES: Codes, 1942, § 9339; Laws, 1934, ch. 121.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Provision that an investment trust shall be deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 to 27-13-61, see § 79-15-25.

§ 27-13-5. Tax on domestic corporations [Repealed effective January 1, 2028].

(1)(a) **Franchise tax levy.** Except as otherwise provided in subsections (3), (4), (5) and (7) of this section, there is hereby imposed, to be paid and collected as hereinafter provided, a franchise or excise tax upon every corporation, association or joint-stock company or partnership treated as a corporation under the income tax laws or regulations, organized or created for pecuniary gain, having privileges not possessed by individuals, and having authorized capital stock now existing in this state, or hereafter organized, created or established, under and by virtue of the laws of the State of Mississippi, equal to:

(i) For tax years beginning before January 1, 2018, Two Dollars and Fifty Cents ($2.50) for each One Thousand Dollars ($1,000.00), or fraction thereof, of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(ii) For tax years beginning on or after January 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents ($2.50) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(iii) For tax years beginning on or after January 1, 2019, but before January 1, 2020, Two Dollars and Twenty-five Cents ($2.25) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(iv) For tax years beginning on or after January 1, 2020, but before January 1, 2021, Two Dollars ($2.00) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(v) For tax years beginning on or after January 1, 2021, but before January 1, 2022, One Dollar and Seventy-five Cents ($1.75) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(vi) For tax years beginning on or after January 1, 2022, but before January 1, 2023, One Dollar and Fifty Cents ($1.50) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(vii) For tax years beginning on or after January 1, 2023, but before January 1, 2024, One Dollar and Twenty-five Cents ($1.25) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(viii) For tax years beginning on or after January 1, 2024, but before January 1, 2025, One Dollar ($1.00) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(ix) For tax years beginning on or after January 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(x) For tax years beginning on or after January 1, 2026, but before January 1, 2027, Fifty Cents (50¢) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(xi) For tax years beginning on or after January 1, 2027, but before January 1, 2028, Twenty-five Cents (25¢) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(b) In no case shall the franchise tax due for the accounting period be less than Twenty-five Dollars ($25.00).

(c) It is the purpose of this section to require the payment to the State of Mississippi of this tax for the right granted by the laws of this state to exist as such organization, and to enjoy, under the protection of the laws of this state, the powers, rights, privileges and immunities derived from the state by the form of such existence.

(2) **Annual report of domestic corporations.** Each domestic corporation shall file an annual report as required by the provisions of Section 79-4-16.22.

(3)(a) A corporation that has negotiated a fee-in-lieu as defined in Section 57-75-5 shall not be subject to the tax levied by this section on such project; however, the fee-in-lieu payment shall be otherwise treated in the same manner as the payment of franchise taxes.

(b)(i) As used in this paragraph:

1. "Authority" shall have the meaning ascribed to such term in Section 57-75-5(b);

2. "Project" shall have the meaning ascribed to such term in Section 57-75-5(f)(xxix); and

3. "Enterprise" shall mean the corporation authorized for the project pursuant to Section 57-75-5(f)(xxix).

(ii) The term of the franchise tax fee-in-lieu agreement negotiated under this subsection and authorized by Section 57-75-5(j), between the authority and the enterprise for the project shall not exceed twenty-five (25) years. The franchise tax fee-in-lieu agreement shall apply only to new franchise tax liability attributable to the project, and shall not apply to any existing franchise tax liability of the enterprise in connection with any current operations in this state.

(iii) In the event that the annual number of full-time jobs maintained by the enterprise falls below the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and the enterprise for two (2) consecutive years, the franchise tax fee-in-lieu for the project shall be suspended until the first tax year during which the annual number of full-time jobs maintained by the enterprise reaches the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and the enterprise.

(iv) The enterprise shall be entitled to utilize a single sales apportionment factor in the calculation of its liability for franchise tax imposed by this chapter which is attributable to the project for any year for which it files a Mississippi franchise tax return. The enterprise shall be entitled to continue to utilize such single sales apportionment factor notwithstanding a suspension of the franchise tax fee-in-lieu pursuant to subparagraph (iii) of this paragraph.

(4) An approved business enterprise as defined in the Growth and Prosperity Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the approved business enterprise in a growth and prosperity county or supervisors district as provided in the Growth and Prosperity Act.

(5) A business enterprise operating a project as defined in Section 57-64-33, in a county that is a member of a regional economic development alliance created under the Regional Economic Development Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise in such a county as provided in Section 57-64-33.

(6) The tax levied by this chapter and paid by a business enterprise located in a redevelopment project area under Sections 57-91-1 through 57-91-11 shall be deposited into the Redevelopment Project Incentive Fund created in Section 57-91-9.

(7) A business enterprise as defined in Section 57-113-1 that is exempt from certain state taxes under Section 57-113-5 shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise.

SOURCES: Codes, 1942, § 9313; Laws, 1934, ch. 121; Laws, 1940, ch. 115; Laws, 1955, Ex. ch. 118, § 1; Laws, 1962, ch. 589, § 1; Laws, 1964, ch. 512, § 1; Laws, 1975, ch. 467, § 2; Laws, 1982, ch. 489, § 8; Laws, 1989, ch. 485, § 5; Laws, 2000, 2nd Ex Sess, ch. 1, § 49; Laws, 2002, ch. 464, § 6; Laws, 2005, ch. 468, § 8; Laws, 2010, ch. 533, § 21; Laws, 2013, ch. 419, § 1 Laws, 2016, ch. 499, § 3; Laws, 2016, 1st Ex Sess, ch. 1, § 17, eff from and after Feb. 8, 2016.

Joint Legislative Committee Note — Section 17 of ch. 1, Laws of 2016, 1st Extraordinary Session, effective upon passage (approved February 8, 2016), amended this section. Section 3 of ch. 499, Laws of 2016, effective from and after January 1, 2016 (approved May 13, 2016), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Editor's Note — Laws of 2000, 2nd Ex Sess, ch. 1, § 1effective August 30, 2000, provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Section 57-64-33 referred to in subsection (5), was repealed by Laws of 2004, ch. 481, § 1, eff from and after passage (approved May 1, 2004).

Laws of 2010, ch. 533, § 52, provides:

"SECTION 52. Sections 12 through 23 of this act shall take effect and be in force from and after July 1, 2010, Section 37 of this act shall take effect and be in force from and after January 1, 2010, and the remainder of this act shall take effect and be in force from and after its passage [April 16, 2010]."

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The first 2016 amendment (ch. 499), effective January 1, 2016, in (1), divided the former first sentence into the present introductory paragraph of (a) and (a)(i), and designated the former second and third sentences (b) and (c), respectively; and in (a), added "For tax years beginning before January 1, 2018" at the beginning of (i), and added (a)(ii) through (xi).

The second 2016 amendment (1st Ex. Sess. ch. 1), effective February 8, 2016, in (3), added (b), and made minor stylistic changes.

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Imposition of state and local privilege taxes, see §§ 27-15-11, 27-17-9.

Ad valorem tax assessment of corporations, see §§ 27-35-9, 27-35-31.

Growth and Prosperity Act, see § 57-80-1 et seq.

Taxation of credit unions, see § 81-13-63.

Privilege tax on burial associations, see § 83-37-21.

JUDICIAL DECISIONS

1. In general.

The book value of accounts as regularly employed by the corporation is used to determine the taxable capital of a corporation for franchise tax purposes. Tower Loan of Miss., Inc. v. Mississippi State Tax Comm'n, 662 So. 2d 1077 (Miss. 1995).

A corporation's franchise tax base, as reflected in its book value of accounts, included the ownership interest of its subsidiaries without regard for the tax status of the subsidiaries. Tower Loan of Miss., Inc. v. Mississippi State Tax Comm'n, 662 So. 2d 1077 (Miss. 1995).

An increase in the value of corporate assets reflected in an appraisal made in order to obtain a loan, shown on the books as a "revaluation surplus", is properly taken into account in assessing franchise tax. Scott Bldg. Supply Corp. v. Mississippi State Tax Comm'n, 235 Miss. 22, 108 So. 2d 557 (1959).

The capital of a corporation is its tangibles, the aggregate of its property and assets of all kinds, while its capital stock is the evidence of rights in such property. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

Payment of the franchise or excise tax upon corporations may not be coerced until an assessment of the property of the corporation, involving the two steps of listing and valuing the property, has been made. Craig v. Columbus & G. Ry. Co., 192 Miss. 461, 5 So. 2d 681 (1942).

RESEARCH REFERENCES

ALR. Comment Note.—Validity and construction of state statute making successor corporation liable for taxes of predecessor. 65 A.L.R.3d 1181.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 170 et seq. (domestic corporations generally), 178 et seq. (franchises and privileges).

CJS. 84 C.J.S., Taxation §§ 171-174.

§ 27-13-7. Tax on foreign corporations [Repealed effective January 1, 2028].

(1)(a) **Franchise tax levy.** Except as otherwise provided in subsections (3), (4), (5) and (7) of this section, there is hereby imposed, levied and assessed upon every corporation, association or joint-stock company, or partnership treated as a corporation under the income tax laws or regulations as hereinbefore defined, organized and existing under and by virtue of the laws of some other state, territory or country, or organized and existing without any specific statutory authority, now or hereafter doing business or exercising any power, privilege or right within this state, as hereinbefore defined, a franchise or excise tax equal to:

(i) For tax years beginning before January 1, 2018, Two Dollars and Fifty Cents ($2.50) of each One Thousand Dollars ($1,000.00), or fraction thereof, of the value of capital used, invested or employed within this state, except as hereinafter provided.

(ii) For tax years beginning on or after January 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents ($2.50) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(iii) For tax years beginning on or after January 1, 2019, but before January 1, 2020, Two Dollars and Twenty-five Cents ($2.25) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(iv) For tax years beginning on or after January 1, 2020, but before January 1, 2021, Two Dollars ($2.00) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(v) For tax years beginning on or after January 1, 2021, but before January 1, 2022, One Dollar and Seventy-five Cents ($1.75) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(vi) For tax years beginning on or after January 1, 2022, but before January 1, 2023, One Dollar and Fifty Cents ($1.50) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(vii) For tax years beginning on or after January 1, 2023, but before January 1, 2024, One Dollar and Twenty-five Cents ($1.25) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(viii) For tax years beginning on or after January 1, 2024, but before January 1, 2025, One Dollar ($1.00) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(ix) For tax years beginning on or after January 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(x) For tax years beginning on or after January 1, 2026, but before January 1, 2027, Fifty Cents (50¢) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(xi) For tax years beginning on or after January 1, 2027, but before January 1, 2028, Twenty-five Cents (25¢) for each One Thousand Dollars ($1,000.00), or fraction thereof, in excess of One Hundred Thousand Dollars ($100,000.00), of the value of the capital used, invested or employed in the exercise of any power, privilege or right enjoyed by such organization within this state, except as hereinafter provided.

(b) In no case shall the franchise tax due for the accounting period be less than Twenty-five Dollars ($25.00).

(c) It is the purpose of this section to require the payment of a tax by all organizations not organized under the laws of this state, measured by the amount of capital or its equivalent, for which such organization receives the benefit and protection of the government and laws of the state.

(2) **Annual report of foreign corporations.** Each foreign corporation authorized to transact business in this state shall file an annual report as required by the provisions of Section 79-4-16.22.

(3)(a) A corporation that has negotiated a fee-in-lieu as defined in Section 57-75-5 shall not be subject to the tax levied by this section on such project; however, the fee-in-lieu payment shall be otherwise treated in the same manner as the payment of franchise taxes.

(b)(i) As used in this paragraph:

1. "Authority" shall have the meaning ascribed to such term in Section 57-75-5(b);

2. "Project" shall have the meaning ascribed to such term in Section 57-75-5(f)(xxix); and

3. "Enterprise" shall mean the corporation authorized for the project pursuant to Section 57-75-5(f)(xxix).

(ii) The term of the franchise tax fee-in-lieu agreement negotiated under this subsection and authorized by Section 57-75-5(j), between the authority and the enterprise for the project shall not exceed twenty-five (25) years. The franchise tax fee-in-lieu agreement shall apply only to new franchise tax liability attributable to the project, and shall not apply to any existing franchise tax liability of the enterprise in connection with any current operations in this state.

(iii) In the event that the annual number of full-time jobs maintained by the enterprise falls below the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and the enterprise for two (2) consecutive years, the franchise tax fee-in-lieu for the project shall be suspended until the first tax year during which the annual number of full-time jobs maintained by the enterprise reaches the minimum annual number of full-time jobs required by the authority pursuant to a written agreement between the authority and the enterprise.

(iv) The enterprise shall be entitled to utilize a single sales apportionment factor in the calculation of its liability for franchise tax imposed by this chapter which is attributable to the project for any year for which it files a Mississippi franchise tax return. The enterprise shall be entitled to continue to utilize such single sales apportionment factor notwithstanding a suspension of the franchise tax fee-in-lieu pursuant to subparagraph (iii) of this paragraph.

(4) An approved business enterprise as defined in the Growth and Prosperity Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the approved business enterprise in a growth and prosperity county or supervisors district as provided in the Growth and Prosperity Act.

(5) A business enterprise operating a project as defined in Section 57-64-33, in a county that is a member of a regional economic development alliance created under the Regional Economic Development Act shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise in such a county as provided in Section 57-64-33.

(6) The tax levied by this chapter and paid by a business enterprise located in a redevelopment project area under Sections 57-91-1 through 57-91-11 shall be deposited into the Redevelopment Project Incentive Fund created in Section 57-91-9.

(7) A business enterprise as defined in Section 57-113-1 that is exempt from certain state taxes under Section 57-113-5 shall not be subject to the tax levied by this section on the value of capital used, invested or employed by the business enterprise.

SOURCES: Codes, 1942, § 9314; Laws, 1934, ch. 121; Laws, 1940, ch. 115; Laws, 1955, Ex. Ch. 118, § 2; Laws, 1962, ch. 589, § 2; Laws, 1964, ch. 512, § 2; Laws, 1975, ch. 467, § 3; Laws, 1982, ch. 489, § 9; Laws, 1989, ch. 485, § 6; Laws, 2000, 2nd Ex Sess, ch. 1, § 50; Laws, 2002, ch. 464, § 7; Laws, 2005, ch. 468, § 9; Laws, 2010, ch. 533, § 22; Laws, 2013, ch. 419, § 2; Laws, 2016, ch. 499, § 4; Laws, 2016, 1st Ex Sess, ch. 1, § 18, eff from and after Feb. 8, 2016.

Joint Legislative Committee Note — Section 18 of ch. 1, Laws of 2016, 1st Extraordinary Session, effective upon passage (approved February 8, 2016), amended this section. Section 4 of ch. 499, Laws of 2016, effective from and after January 1, 2016 (approved May 13, 2016), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 5, 2016, meeting of the Committee.

Editor's Note — Section 57-64-33 referred to in subsection (5), was repealed by Laws of 2004, ch. 481, § 1, eff from and after passage (approved May 1, 2004).

Laws of 2000, 2nd Ex Sess, ch. 1, § 1, effective August 30, 2000, provides:

"SECTION 1. This act may be cited as the 'Advantage Mississippi Initiative.'"

Laws of 2010, ch. 533, § 52, provides:

"SECTION 52. Sections 12 through 23 of this act shall take effect and be in force from and after July 1, 2010, Section 37 of this act shall take effect and be in force from and after January 1, 2010, and the remainder of this act shall take effect and be in force from and after its passage [April 16, 2010]."

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The first 2016 amendment (ch. 499), effective January 1, 2016, in (1), divided the former first sentence into the present introductory paragraph of (a) and (a)(i), and designated the former second and third sentences (b) and (c), respectively; and in (a), added "For tax years beginning before January 1, 2018" at the beginning of (i), and added (a)(ii) through (xi).

The second 2016 amendment (1st Ex. Sess. ch. 1), effective February 8, 2016, in (3), added (b), and made minor stylistic changes.

Cross References — Computation of tax against multistate corporations, see § 27-13-13.

Growth and Prosperity Act, see § 57-80-1 et seq.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Particular applications.

1. Validity.

A Mississippi tax on the privilege of doing business in the state does not violate the Federal commerce clause when it is applied to an interstate activity, namely the transportation by a motor carrier in Mississippi to Mississippi dealers of cars manufactured outside the state, with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 2d 326 (1977), reh'g denied, 430 U.S. 976, 97 S. Ct. 1669, 52 L. Ed. 2d 371 (1977).

Imposition of franchise tax measured by the value of capital used, invested or employed within the state did not unconstitutionally burden interstate commerce in the case of an interstate natural gas pipeline company a portion of whose line passed through the state but which did no local business therein. Memphis Natural Gas Co. v. Stone, 335 U.S. 80, 68 S. Ct. 1475, 92 L. Ed. 1832 (1948), but see, Western M.R.R. v. Goodwin, 167 W. Va. 804, 282 S.E.2d 240 (1981).

Imposition of tax by this section does not unconstitutionally burden interstate commerce, as applied to an interstate natural gas pipeline company, a portion of whose line passed through the state but which did no local business therein. Memphis Natural Gas Co. v. Stone, 335 U.S. 80, 68 S. Ct. 1475, 92 L. Ed. 1832 (1948), but see, Western M.R.R. v. Goodwin, 167 W. Va. 804, 282 S.E.2d 240 (1981).

This statute as applied to a foreign corporation qualified as such to do business in Mississippi, and owning rights of way, pipelines and telephone lines across the state, did not violate the federal commerce clause as imposing a tax directly affecting interstate commerce, since the tax was demanded of all business corporations having capital in the state just for being there with their capital. Stone v. Interstate Natural Gas Co., 103 F.2d 544 (5th Cir. 1939), aff'd, 308 U.S. 522, 60 S. Ct. 292, 84 L. Ed. 442 (1939), reh'g denied, 308 U.S. 639, 60 S. Ct. 381, 84 L. Ed. 530 (1940).

2. Construction and application, generally.

The amount of the franchise tax and the mode of the measurement thereof are matters which rest within legislative discretion, when not burdensome or oppressive and when solely for revenue. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The capital of a corporation is its tangibles, the aggregate of its property and assets of all kinds, while its capital stock is the evidence of rights in such property. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The state, for revenue and as a quid pro quo, may levy upon corporations which carry any substantial part of their business activities in the state an exaction called a franchise tax. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

An item designated as unamortized debt discount and expense incurred in connection with the floating of a bond issue of a foreign corporation, carried on its books as an asset in order to balance them but representing no actual value, did not constitute "capital" within the definition of this section so as to permit imposition of additional franchise tax assessments by the state tax commission. State Tax Comm'n v. Mississippi Power & Light Co., 194 Miss. 260, 11 So. 2d 828 (1943).

3. Particular applications.

A state's fairly apportioned and nondiscriminatory corporation franchise tax levied upon the "incident" of a corporation's "qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form," does not violate the commerce clause as applied to a foreign corporation engaged exclusively in interstate business (transmission of liquefied petroleum) where the corporation qualifies in the taxing state to carry on its business in corporate form and does business in the taxing state in corporate form, thereby gaining benefits and protections from the taxing state of value and importance to its business. Colonial Pipeline Co. v. Traigle, 421 U.S. 100, 95 S. Ct. 1538, 44 L. Ed. 2d 1 (1975).

Deferred federal income tax accounts carried on the books of the taxpayer as required by the Federal Power Commission were not accounts for definite known fixed liabilities which did not enhance the value of the corporation's assets, where the money represented by these accounts was available for the use of the corporation at all times, and was not for a definite known fixed liability, and, therefore, additional franchise tax assessment against such accounts was proper. Trunkline Gas Co. v. Mississippi State Tax Comm'n, 238 Miss. 591, 119 So. 2d 378 (1960).

An increase in the value of corporate assets reflected in an appraisal made in order to obtain a loan, shown on the books as a "revaluation surplus", is properly taken into account in assessing franchise tax. Scott Bldg. Supply Corp. v. Mississippi State Tax Comm'n, 235 Miss. 22, 108 So. 2d 557 (1959).

A foreign corporation doing no intrastate business, having no office in this state, and employing no one in this state other than those necessary to maintain 135 miles of pipe line and related facilities through which it transports natural gas between points in other states is "doing business" in this state and is subject to a franchise tax. Stone v. Memphis Natural Gas Co., 201 Miss. 670, 29 So. 2d 268 (1947), aff'd, 335 U.S. 80, 68 S. Ct. 1475, 92 L. Ed. 1832 (1948).

A franchise tax of $3400 per annum on a foreign corporation maintaining a natural gas pipe line through the state, on which the ad valorem taxes are $82,000 a year, does not have any substantial effect to block the free flow of commerce, nor is it out of reasonable proportion to the services and protection furnished by the state. Stone v. Memphis Natural Gas Co., 201 Miss. 670, 29 So. 2d 268 (1947), aff'd, 335 U.S. 80, 68 S. Ct. 1475, 92 L. Ed. 1832 (1948).

Preferred stock issued by foreign box manufacturing corporation to its consolidating members, in consideration of the conveyance of their timber holdings located in state, and providing for retirement of such stock by value of timber when cut, was properly included in computations of franchise tax as representing capital used, invested or employed in the state, as against contention that such stock was a mere evidence of indebtedness, creating between the corporation and the holders of such stock the relation of debtor and creditor. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

Statutes imposing a franchise or excise tax on corporations, associations, joint stock companies, and every form of organization for pecuniary gain, having capital stock and represented by shares and having privileges not possessed by individuals or partnerships, doing business within the state, "doing business" being defined to mean and include each and every act, power or privilege exercised or enjoyed in the state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organization, was applicable to a foreign natural gas distributing corporation which, though it did not domesticate, filed its charter and appointed its agent for services, and which owned and controlled rights of way and pipes for the transportation of oil across the state from a point in Louisiana to another point in Louisiana, selling only a small percentage of the oil at wholesale in Mississippi. Stone v. Interstate Natural Gas Co., 103 F.2d 544 (5th Cir. 1939), aff'd, 308 U.S. 522, 60 S. Ct. 292, 84 L. Ed. 442 (1939), reh'g denied, 308 U.S. 639, 60 S. Ct. 381, 84 L. Ed. 530 (1940).

RESEARCH REFERENCES

ALR. Constitutionality of state tax on, or measured by, income of foreign corporation. 67 A.L.R.2d 1322.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 190 et seq.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

CJS. 84 C.J.S., Taxation §§ 212, 215-216, 760, 761, 765-767.

§ 27-13-8. Tax on qualified subchapter S subsidiaries; tax on single member limited liability companies [Repealed effective January 1, 2028].

(1) An entity that is required to file and report for federal income tax purposes the activity conducted in Mississippi of a qualified subchapter S subsidiary, shall be required to file a Mississippi combination return of S Corporation income and franchise tax.

(2) An entity that is required to file and report for federal income tax purposes on the activity conducted in Mississippi of a single member limited liability company which is not classified as a corporation, and thus disregarded, shall be required to file a Mississippi combination return of corporation income and franchise tax even if such entity is included in a consolidated corporation income tax return filed for federal purposes.

SOURCES: Laws, 2000, ch. 479, § 1, eff from and after Jan. 1, 2000.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-13-9. Basis of valuation [Repealed effective January 1, 2028].

(1) The tax imposed, levied and assessed, under the provisions of this chapter, shall be calculated on the basis of the value of the capital employed in this state for the year preceding the date of filing the return, whether a calendar year, or fiscal year, except where otherwise provided in this chapter, measured by the combined issued and outstanding capital stock, paid-in capital, surplus and retained earnings; provided, that in computing capital, paid-in capital, surplus and retained earnings, there shall be included deferred taxes, contingent liabilities and all true reserves, including all reserves other than for definite known fixed liabilities which do not enhance the value of assets; and amounts designated for the payment of dividends shall not be excluded from such calculations until such amounts are definitely and irrevocably placed to the credit of stockholders, subject to withdrawal on demand; provided, however, there shall not be included in the value of the capital stock any sums representing debts, notes, bonds and mortgages due and payable, except where notes or debts due are provided by an affiliated company as a substitute for stock or paid-in capital; nor depreciation reserves, bad debt reserves, nor reserves representing valuation accounts, nor redeemable pref-

erence shares issued by a railroad pursuant to Section 506 of the Railroad Revitalization and Regulatory Reform Act of 1976, and capital shall be reduced by the cost of treasury stock of the corporation. In the case of an association or other organization, except those exempted under Section 27-13-63, that does not have a capital structure like a corporation, the tax is based on that organization's accounts that are equivalent to the aforementioned corporate accounts, or any other capital employed in Mississippi. There shall not be any exclusion of capital by a corporation relating to the stock of another corporation except as otherwise provided in subsection (2). In no case shall the franchise tax so computed be less than Twenty-five Dollars ($25.00) for the period covering which the return is filed. In no case shall the determined capital in Mississippi be less than the assessed value of the real estate and tangible personal property in Mississippi for the year preceding the year in which the return is due.

(2) In the case of a holding corporation, the value of the capital used, invested or employed in this state shall exclude that portion of the book value of the holding corporation's investment in stock or securities of its subsidiary corporation determined under the following formula: (a) the ratio between (i) the holding corporation's investment in stock or securities of its subsidiary corporation, computed pursuant to regulations promulgated by the commissioner, and (ii) the holding corporation's total assets shall be computed; (b) such ratio then shall be applied to the total capital stock, surplus, undivided profits and true reserves of the holding corporation in order to arrive at the amount of the exclusion.

SOURCES: Codes, 1942, § 9317; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 2; Laws, 1980, ch. 462; Laws, 1982, ch. 489, § 10; Laws, 1985, ch. 521, § 4; Laws, 1988, ch. 391, § 4; Laws, 1993, ch. 350, § 2; Laws, 1999, ch. 395, § 1; Laws, 2014, ch. 521, § 1, eff from and after July 1, 2014.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Use of book value in determining amount of capital, as defined in this section, see § 27-13-11.

Federal Aspects — Railroad Revitalization and Regulatory Reform Act of 1976, see 45 USCS § 801 et seq.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.
3. Exceptions.

1. Validity.

This statute does not violate the constitutional provision prohibiting taxation of property in excess of its true value, since that provision relates only to property taxation, while the tax hereunder although measured by the value of property invested in the state, the taxpayer is not taxed because it owns it, but because it has come into and remains in the state to use it. Stone v. Interstate Natural Gas Co., 103 F.2d 544 (5th Cir. 1939), aff'd, 308 U.S. 522, 60 S. Ct. 292, 84 L. Ed. 442 (1939), reh'g denied, 308 U.S. 639, 60 S. Ct. 381, 84 L. Ed. 530 (1940).

2. Construction and application.

Statute's use of "debt" refers to the payment of money, not the performance of a service because the statute specifically excludes from taxation "sums representing debts" and groups that term with "notes, bonds and mortgages due and payable," all of which represent the promise to pay a sum of money; thus, a corporation's "deferred revenue" account cannot be excepted from franchise taxation as a debt. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Corporation failed to present clear proof that its "deferred revenue" account represented one of the exceptions to the franchise tax because its own expert admitted that its "deferred revenue" account could not be considered a reserve account since the funds represented by the account were deposited in the corporation's general operating bank account and, therefore, were available for general use by the corporation. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Because the statute requires the franchise tax to be calculated for the year preceding the date of the filing of the return, "deferred income" cannot represent a netted term, as expenses cannot be deducted retroactively. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Chancery court had the authority to rule on the motion for summary judgment filed by the Mississippi Department of Revenue because whether a corporation's "deferred revenue" account was subject to franchise tax was a question of law; the parties disputed a single issue, one that cancould be resolved only through interpretation of the franchise-tax statutes Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Mississippi Department of Revenue properly assessed additional franchise tax against a corporation for failure to include a "deferred revenue" account because it reasonably interpreted the deferred income as money received but not yet earned; a prepayment for future services fit within the definition, and thus, the funds represented by the deferred revenue account, regardless of the label ascribed to it, were included in the franchise-tax base for the year those funds were received. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Although it is possible to have a legitimate debt between a subsidiary and its parent, which would be excluded from capital as debt under the statute, no such "true debt" existed where a subsidiary declared a dividend of $1 billion to be paid to its sole shareholder and parent and the dividend was paid by the transfer of a promissory note issued by a third party for $73.6 million and by a promissory note issued by the subsidiary for $926.4 million since the $926.4 million was not placed definitely and irrevocably within the hands of the parent, the note was not subject to withdrawal on demand, and the subsidiary did not pay the note out of its retained earnings and surplus as instructed by the directors and, instead, issued a note to its parent without providing any security and without reducing any assets as is normally done when a dividend is declared. Emhart Indus., Inc. v. Mississippi State Tax Comm'n, 798 So. 2d 340 (Miss. 2000).

Sections 27-13-9 and 27-13-11 provide no exemptions for the retained earnings of a subsidiary. Tower Loan of Miss., Inc. v. Mississippi State Tax Comm'n, 662 So. 2d 1077 (Miss. 1995).

A corporate taxpayer's liability accounts were properly includable in the corporation's statutorily defined capital, which serves as the basis for the imposition of franchise tax, because none of them were "for definite known fixed liabilities which do not enhance the value of assets" where the corporation's two deferred income tax accounts would not become due and payable in future years unless the taxpayers were making money, the workers' compensation account would not become due and payable until claims were made against the company, and the plant shutdown account would not become due and payable until plants were shut down and loss was incurred as a consequence of the shutdown. Gencorp, Inc. v. State Tax Comm'n, 543 So. 2d 657 (Miss. 1989).

Book value employed by corporation is prima facie correct as to treatment of undivided profits account, which excludes from undivided profits unreceived payments under notes represented by deferred gain account, and fact that taxpayer employed accounting method with which commission disagreed, although approved in federal and state income tax law, is not sufficient to overcome prima facie correctness of taxpayer's books. Mississippi State Tax Comm'n v. Dyer Inv. Co., 507 So. 2d 1287 (Miss. 1987).

Under the statutes relating to corporate franchise taxation, a corporation could not overcome the presumption of correctness of the book value of its capital by instead averaging the market value of its shares of stock where such averaging method was not a means of measuring the value of capital authorized by statute. Mississippi State Tax Comm'n v. Illinois Cent. G.R.R., 360 So. 2d 1218 (Miss. 1978).

An increase in the value of corporate assets reflected in an appraisal made in order to obtain a loan, shown on the books as a "revaluation surplus", is properly taken into account in assessing franchise tax. Scott Bldg. Supply Corp. v. Mississippi State Tax Comm'n, 235 Miss. 22, 108 So. 2d 557 (1959).

The amount of the franchise tax and the mode of the measurement thereof are matters which rest within legislative discretion, when not burdensome or oppressive and when solely for revenue. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The mode of measurement is to look to the amount of capital of the corporation employed or so situated as to be privileged to be employed in the state, and in determining the amount of the capital, the total of the capital stock, stated surplus, and undivided profits of the corporation is used prima facie as a determinative factor. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The capital of a corporation is its tangibles, the aggregate of its property and assets of all kinds, while its capital stock is the evidence of rights in such property. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The capital stock, surplus, etc., of a corporation is looked to simply as a convenient form of the evidence prima facie of the "value of capital used, invested or employed within this state," it being immaterial what name or characteristic the particular capital stock may have or what rights it confers inter sese. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

Preferred stock issued by foreign box manufacturing corporations to its consolidating members in consideration of the conveyance of their timber holdings located in state, and providing for retirement of such stock by value of timber when cut, was properly included in computations of franchise tax as representing capital used, invested or employed in the state, as against contention that such stock was a mere evidence of indebtedness, creating between the corporation and the holders of such stock the relation of debtor and creditor. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

Item, designated as unamortized debt discount and expense, and representing expense incurred by a foreign corporation in floating a bond issue, carried on the books of the corporation as an asset, allegedly to balance the books but representing no actual value, is not "capital" within the meaning of the statute so as to be subject to the franchise tax imposed by the statute. State Tax Comm'n v. Mississippi Power & Light Co., 194 Miss. 260, 11 So. 2d 828 (1943).

The method provided by the statute for ascertaining the property in which the capital of a corporation subject to the franchise or excise tax is invested is exclusive, thereby shutting out the ascertainment of the property and its value and the collection of the tax due thereon by a judicial proceeding without any assessment of the corporation's property having been made by the chairman of the state tax commission. Craig v. Columbus & G. Ry. Co., 192 Miss. 461, 5 So. 2d 681 (1942).

3. Exceptions.

A taxpayer claiming the benefit of an exception under a statute must clearly show that he is entitled thereto. Trunkline Gas Co. v. Mississippi State Tax Comm'n, 238 Miss. 591, 119 So. 2d 378 (1960).

In the provision of this section that taxes be levied against "all true reserves, including all reserves other than for definite known fixed liabilities which do not enhance the value of assets" the words "other than" have the identical meaning as the word "except." Trunkline Gas Co. v. Mississippi State Tax Comm'n, 238 Miss. 591, 119 So. 2d 378 (1960).

Deferred federal income tax accounts which were carried on a taxpayer's books pursuant to the requirement of the federal power commission were not accounts for definite known fixed liabilities which did not enhance the value of assets, since the money represented by the accounts was available for use of the corporation at all times, and was not for a definite fixed liability, and, therefore, additional franchise tax assessment against such accounts was proper. Trunkline Gas Co. v. Mississippi State Tax Comm'n, 238 Miss. 591, 119 So. 2d 378 (1960).

RESEARCH REFERENCES

ALR. Liability of corporation which has previously paid franchise fee or tax on authorized or issued stock, for additional fee or tax on later increase after intermediate reduction. 16 A.L.R.2d 1090.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 181.

CJS. 84 C.J.S., Taxation §§ 171-174, 729, 730.

Law Reviews. 1989 Mississippi Supreme Court Review: Franchise Tax Base. 59 Miss. L. J. 794, Winter, 1989.

§ 27-13-11. Book value [Repealed effective January 1, 2028].

For the purpose of determining the amount of capital, as defined in Section 27-13-9, Mississippi Code of 1972, as amended, the book value of the accounts as regularly employed in conducting the affairs of the corporation shall be accepted as prima facie correct, except where the commissioner determines that the book value does not properly reflect capital employed in this state and in that situation the commissioner's determination of capital shall be prima facie correct.

If any organization has cause to believe that the calculations required on the return prescribed are not sufficiently informative or do not properly reveal the true franchise or excise tax to be due as measured by the value of the capital of that organization, or shall feel aggrieved at the requirements upon it for information or tax, then such organization shall have the right to file with the commissioner a petition and affidavit signed as returns are by this chapter required to be signed, setting forth the facts showing the true value of its capital.

SOURCES: Codes, 1942, § 9318; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 3; Laws, 1985, ch. 521, § 5, eff from and after January 1, 1985.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

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Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

JUDICIAL DECISIONS

1. In general.
2. What constitutes capital.

1. In general.

Because the statute requires the franchise tax to be calculated for the year preceding the date of the filing of the return, "deferred income" cannot represent a netted term, as expenses cannot be deducted retroactively. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Mississippi Department of Revenue properly assessed additional franchise tax against a corporation for failure to include a "deferred revenue" account because it reasonably interpreted the deferred income as money received but not yet earned; a prepayment for future services fit within the definition, and thus, the funds represented by the deferred revenue account, regardless of the label ascribed to it, were included in the franchise-tax base for the year those funds were received. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Sections 27-13-9 and 27-13-11 provide no exemptions for the retained earnings of a subsidiary. Tower Loan of Miss., Inc. v. Mississippi State Tax Comm'n, 662 So. 2d 1077 (Miss. 1995).

The book value of accounts as regularly employed by the corporation is used to determine the taxable capital of a corporation for franchise tax purposes. Tower Loan of Miss., Inc. v. Mississippi State Tax Comm'n, 662 So. 2d 1077 (Miss. 1995).

A corporation's franchise tax base, as reflected in its book value of accounts, included the ownership interest of its subsidiaries without regard for the tax status of the subsidiaries. Tower Loan of Miss., Inc. v. Mississippi State Tax Comm'n, 662 So. 2d 1077 (Miss. 1995).

Book value employed by corporation is prima facie correct as to treatment of undivided profits account, which excludes from undivided profits unreceived payments under notes represented by deferred gain account, and fact that taxpayer employed accounting method with which commission disagreed, although approved in federal and state income tax law, is not sufficient to overcome prima facie correctness of taxpayer's books. Mississippi State Tax Comm'n v. Dyer Inv. Co., 507 So. 2d 1287 (Miss. 1987).

Under the statutes relating to corporate franchise taxation, a corporation could not overcome the presumption of correctness of the book value of its capital by instead averaging the market value of its shares of stock where such averaging method was not a means of measuring the value of capital authorized by statute. Mississippi State Tax Comm'n v. Illinois Cent. G.R.R., 360 So. 2d 1218 (Miss. 1978).

The amount of the franchise tax and the mode of the measurement thereof are matters which rest within legislative discretion, when not burdensome or oppressive and when solely for revenue. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The mode of measurement is to look to the amount of capital of the corporation employed or so situated as to be privileged to be employed in the state, and in determining the amount of the capital, the total of the capital stock, stated surplus, and undivided profits of the corporation is used prima facie as a determinative factor. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

2. What constitutes capital.

A corporate taxpayer's liability accounts were properly includable in the corporation's statutorily defined capital, which serves as the basis for the imposition of franchise tax, because none of them were "for definite known fixed liabilities which do not enhance the value of assets" where the corporation's 2 deferred income tax accounts would not become due and payable in future years unless the taxpayers were making money, the workers' compensation account would not become due and payable until claims were made against the company, and the plant shutdown account would not become due and payable until plants were shut down and loss was incurred as a consequence of the shutdown. Gencorp, Inc. v. State Tax Comm'n, 543 So. 2d 657 (Miss. 1989).

An increase in the value of corporate assets reflected in an appraisal made in order to obtain a loan, shown on the books as a "revaluation surplus", is properly taken into account in assessing franchise tax. Scott Bldg. Supply Corp. v. Mississippi State Tax Comm'n, 235 Miss. 22, 108 So. 2d 557 (1959).

The capital of a corporation is its tangibles, the aggregate of its property and assets of all kinds, while its capital stock is the evidence of rights in such property. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The capital stock, surplus, etc., of a corporation is looked to simply as a convenient form of the evidence prima facie of the "value of capital used, invested or employed within this state," it being immaterial what name or characteristic the particular capital stock may have or what rights it confers inter sese. Southern Package Corp. v. State Tax Comm'n, 195

Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

Item, designated as unamortized debt discount and expense, and representing expense incurred by a foreign corporation in floating a bond issue, carried on the books of the corporation as an asset, allegedly to balance the books but representing no actual value, is not "capital" within the meaning of the statute so as to be subject to the franchise tax imposed by the statute. State Tax Comm'n v. Mississippi Power & Light Co., 194 Miss. 260, 11 So. 2d 828 (1943).

§ 27-13-13. Multistate corporations [Repealed effective January 1, 2028].

(1) In the case of organizations doing business both within and without Mississippi, the value of the capital employed in this state shall be determined by first computing the ratio between (1) the real and tangible personal property owned in Mississippi and gross receipts from business carried on in Mississippi, and (2) the total real and tangible personal property owned and gross receipts wherever located and from wherever received. Said ratio then shall be applied to the total capital stock, surplus, undivided profits and true reserves and the result of that application shall be the capital employed in this state. Provided, however, that the amount of the determined capital in Mississippi shall in no case be less than the assessed value of the Mississippi property of the organization for the year preceding the year in which the return is due.

(2)(a) For the purpose of this section, for tax returns for tax years ending before January 1, 1999, an organization which uses a formula method of apportionment in making income tax returns to this state shall determine its gross receipts from business carried on in Mississippi by applying to total unitary receipts the ratio achieved, or which would be achieved, by such formula and adding to the result of such application any nonunitary Mississippi receipts.

(b) For the purpose of this section, for tax returns for tax years ending on or after January 1, 1999, the gross receipts of an organization that is required to use a formula method of apportionment in making income tax returns to this state shall be the same (both as to gross receipts from business carried on in Mississippi and gross receipts wherever located) as the gross receipts (or sales) used for the receipts or sales factor in the applicable income tax formula. However, gross receipts from business carried on in Mississippi, for the purposes of this section, shall also include any receipts from the taxpayer's business operations which are not apportioned but rather are directly allocated or assigned to this state. If the taxpayer is required to use a formula method of apportionment in making income tax returns which does not have a receipts or sales factor, then the receipts factor for the franchise tax formula shall be determined by regulation of the commission.

(c) For purposes of this section, for tax returns for tax years ending on or after December 31, 2001, the ratio described in subsection (1) of this section shall include all gross receipts as specified in paragraph (b) of this subsection and where a taxpayer owns a direct or indirect interest in a flow-through entity, the taxpayer shall include in the ratio its portion of the flow-through entity's (i) real and tangible personal property owned in Mississippi and gross receipts from business carried on in Mississippi, and (ii) total real and tangible property owned and gross receipts wherever located and from wherever received. The taxpayer shall include its portion of the flow-through entity's assessed value of Mississippi property when determining its assessed value of Mississippi property. A flow-through entity's real property, tangible personal property, gross receipts and assessed value of property shall include its portion of these same items of any flow-through entity in which it owns a direct or indirect interest. For purposes of this section, flow-through entity is every form of organization other than a corporation, association or joint-stock company or other organization which would qualify for exemption under Section 27-13-63 if the organization were a corporation, association or joint-stock company.

(d) For purposes of this section, receipts for sales to a Mississippi distribution facility of pharmaceutical products by a major supplier are not included in the Mississippi receipts in computing the apportionment ratio. As used in this paragraph:

(i) "Major supplier" means a company or group of affiliated companies (as defined in Section 27-7-37) who ship at least One Hundred Million Dollars ($100,000,000.00) annually of pharmaceutical products to a Mississippi distribution facility.

(ii) "Mississippi distribution facility" means a distribution facility that received funding from the "Mississippi Industry Incentive Financing Revolving Fund" to open a facility in Mississippi and construction on the facility was begun between July 1, 2010, and December 31, 2010.

SOURCES: Codes, 1942, § 9319; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 4; Laws, 1975, ch. 467, § 4; Laws, 1997, ch. 536, § 1; Laws, 2001, ch. 586, § 7; Laws, 2011, ch. 537, § 1, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — Laws of 2001, ch. 586, §§ 8, 9, effective January 1, 2001, provide as follows:

"SECTION 8. This act shall apply to taxable years beginning on or after January 1, 2001.

"SECTION 9. No rules or regulations shall be promulgated or enforced pursuant to this act unless such rules or regulations apply equally to each taxpayer affected by this act."

Laws of 2011, ch. 537, § 3, effective April 26, 2011, provides:

"SECTION 3. Section 1 of this act shall take effect and be in force from and after its passage [April 26, 2011] and Section 2 of this act shall take effect and be in force from and after January 1, 2011."

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Mississippi Industry Incentive Financing Revolving Fund, see § 57-1-221.

JUDICIAL DECISIONS

1. In general.
2. Gross receipts.
3. Apportionment formula.

1. In general.

For purposes of assessing franchise tax on the receipts of a multi-state corporation, capital derivation is computed by a 2-step process; the first step is to determine the total capital of the corporation, and the second step is to determine the relationship of the corporation's in-state activities to its total activities nationwide. Mississippi State Tax Comm'n v. Chevron U.S.A., Inc., 650 So. 2d 1353 (Miss. 1995).

"Unitary receipts" cannot be directly allocated for franchise tax purposes. Mississippi State Tax Comm'n v. Chevron U.S.A., Inc., 650 So. 2d 1353 (Miss. 1995).

Section 27-13-13, which prescribes a formula for the valuation of local offices of multistate corporations, is particularly well-suited for application in valuing the intangible assets of branch banks because the problems encountered in valuing the assets of a multistate corporation's Mississippi assets are directly analogous to those faced in valuing the intangible assets of branch banks, which are essentially parts of multicounty corporations. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

A state's fairly apportioned and nondiscriminatory corporation franchise tax levied upon the "incident" of a corporation's "qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form," does not violate the commerce clause as applied to a foreign corporation engaged exclusively in interstate business (transmission of liquefied petroleum) where the corporation qualifies in the taxing state to carry on its business in corporate form and does business in the taxing state in corporate form, thereby gaining benefits and protections from the taxing state of value and importance to its business. Colonial Pipeline Co. v. Traigle, 421 U.S. 100, 95 S. Ct. 1538, 44 L. Ed. 2d 1 (1975).

The basis of the tax being the protection afforded by the state to the taxpayer's local activities, the tax is not one lending itself to repeated exactions in other states. Mississippi State Tax Comm'n v. Tennessee Gas Transmission Co., 239 Miss. 191, 116 So. 2d 550 (1959), appeal dismissed, 364 U.S. 290, 81 S. Ct. 61, 5 L. Ed. 2d 39 (1960).

The amount of the franchise tax and the mode of the measurement thereof are matters which rest within legislative discretion, when not burdensome or oppressive and when solely for revenue. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The capital of a corporation is its tangibles, the aggregate of its property and assets of all kinds, while its capital stock is the evidence of rights in such property. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

The capital stock, surplus, etc., of a corporation is looked to simply as a convenient form of the evidence prima facie of the "value of capital used, invested or employed within this state," it being immaterial what name or characteristic the particular capital stock may have or what rights it confers inter sese. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

2. Gross receipts.

The meaning of "gross receipts" in the language of this section as regards gross receipts from business carried on in the state in relation to the total real estate, and tangible personal property, refers to receipts from that which is actually done or carried on in the state without regard to where the sales of the products are made or to whom they are made. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

Gross receipts from sales of products or goods produced or manufactured by a business carried on in the state are subject to the franchise tax, notwithstanding that the sales are made outside the state. Southern Package Corp. v. State Tax Comm'n, 195 Miss. 864, 15 So. 2d 436 (1944), error overruled, 195 Miss. 874, 16 So. 2d 856 (1944).

3. Apportionment formula.

A multi-state corporation which employs the formula method of apportionment for calculating its state income tax liability must, for purposes of calculating franchise taxes, determine its total gross receipts from in-state business by applying to its total unitary receipts, wherever located and received, the ratio determined by such income tax formula, which determines the unitary gross receipts of the corporation to which non-unitary receipts are added; this method must be used even if the taxpayer claims that actual sales or receipts could be geographically identified and directly accounted for. Mississippi State Tax Comm'n v. Chevron U.S.A., Inc., 650 So. 2d 1353 (Miss. 1995).

The apportionment formula prescribed by this section results in a measurement of franchise tax reasonably related to the privileges granted; and is a valid exercise of the state's taxing power. Mississippi State Tax Comm'n v. Tennessee Gas Transmission Co., 239 Miss. 191, 116 So. 2d 550 (1959), appeal dismissed, 364 U.S. 290, 81 S. Ct. 61, 5 L. Ed. 2d 39 (1960).

Being apportioned to the capital employed within the state by multi-state organizations, the tax is not discriminatory. Mississippi State Tax Comm'n v. Tennessee Gas Transmission Co., 239 Miss. 191, 116 So. 2d 550 (1959), appeal dismissed, 364 U.S. 290, 81 S. Ct. 61, 5 L. Ed. 2d 39 (1960).

RESEARCH REFERENCES

ALR. Construction and application of Uniform Division of Income for Tax Purposes Act. 8 A.L.R.4th 934.

Construction and Application of Uniform Division of Income for Tax Purposes Act (UDITPA) — Determination of Business Income. 74 A.L.R.6th 1.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 199.

CJS. 84 C.J.S., Taxation §§ 729, 730.

§ 27-13-15. Repealed.

Repealed by Laws of 1984, ch. 447, § 6, eff from and after April 30, 1984. [Codes, 1942, § 9320; Laws, 1934, ch. 121]

Editor's Note — Former § 27-13-15 pertained to capital of corporations subject to the regulation and supervision of the interstate commerce commission.

§ 27-13-17. Accrual, payment and reporting of tax [Repealed effective January 1, 2028].

(1) **In general.** The tax levied by this chapter is assessed for the annual accounting period regularly used by the taxpayer in keeping its books, with no proration for a portion of the year in the case of dissolution of domestic corporations or withdrawal from the state by foreign corporations or where a corporation otherwise ceases to become taxable under this chapter. The tax accrues on the first day of each accounting period, to be known as the accrual date, and annually thereafter, and is computed on the basis of the previous accounting period closing immediately prior to the accrual date, to be known as the measuring date.

For all corporations having an accrual date on or after June 1, 1975, the tax is due and payable in full to the commissioner on or before the fifteenth day of the third month following the close of the annual accounting period. With its payment, the taxpayer shall deliver to the commissioner a full, accurate and complete report and statement signed by a duly authorized officer of the corporation, containing such information as the commissioner may require.

(2) **Accounting periods.** If permission is granted to change the corporate accounting period, as provided in subsection (4) of this section, the corporation shall file a return and make payment of the tax for the period from the end of the twelve-month period for which the tax had already accrued to the first closing of the new accounting period. The tax to be paid in this case shall be based on the preceding accounting period closing and shall be computed by multiplying the ratio that the number of months from the closing date under the prior accounting period to the closing of the new accounting period bears to twelve (12) times the tax as computed on the yearly basis. Subsequent returns will be filed on the basis of the new accounting period in accordance with the provisions of this chapter.

(3) **Newly taxable corporations.** When a corporation is incorporated, domesticated, commences business or qualifies to do business in this state, it shall, on or before the sixtieth day following the date of its charter of incorporation (as to domestic corporation), domestication, qualification or commencement of business in this state, make and deliver to the commissioner, in such form as he may prescribe, a full, accurate and complete statement signed by either its president, vice president or treasurer containing such facts and information as may be required by the commissioner in the administration of the tax levied by this chapter. After the first closing of the corporate books, the tax is payable as provided in subsection (1) of this section. No corporation, foreign or domestic, shall be permitted to do business in this state without paying the franchise tax levied by this chapter.

(4) **Accounting period not to be changed.** No accounting period, other than calendar year, will be recognized, unless before its close it was definitely established as an accounting period by the taxpayer and the books of such

taxpayer were kept in accordance therewith. No accounting period shall be changed without the approval of the commissioner.

(5) **Combined returns.** A combined return of franchise tax, being Section 27-13-1 et seq.; income tax, being Section 27-7-1 et seq.; and the annual report of domestic and foreign corporations, being Section 79-4-16.22, is herein authorized, to be filed in accordance with rules or regulations promulgated by the commissioner. In the case of authorized extensions of time for filing returns, including the annual report of domestic or foreign corporations, the provisions of the Mississippi Income Tax Law of 1952, being Section 27-1-1 et seq., as amended, shall control with respect to extensions of time for the filing of a combined return.

(6) **Final return.** An organization which begins the accounting year for which the tax is due shall be liable for payment of the full tax, notwithstanding its dissolution or withdrawal prior to the end of said year or prior to the due date of the return.

SOURCES: Codes, 1942, § 9315; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 1; Laws, 1966, ch. 635, § 1; Laws, 1975, ch. 467, § 5; Laws, 1982, ch. 489, § 11; Laws, 2013, ch. 419, § 3, eff from and after July 1, 2013.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Examination of and secrecy accorded combined tax returns, see § 27-13-57.

Penalty for fraudulent returns, see § 27-13-61.

JUDICIAL DECISIONS

1. In general.

Mississippi Department of Revenue properly assessed additional franchise tax against a corporation for failure to include a "deferred revenue" account because it reasonably interpreted the deferred income as money received but not yet earned; a prepayment for future services fit within the definition, and thus, the funds represented by the deferred revenue account, regardless of the label ascribed to it, were included in the franchise-tax base for the year those funds were received. Fishbelt Feeds, Inc. v. Miss. Dep't of Revenue, 158 So. 3d 984 (Miss. 2014).

Payment of the franchise or excise tax upon corporations could not be coerced until an assessment of the property of the corporation, involving the two steps of listing and valuing the property, had been made. Craig v. Columbus & G. Ry. Co., 192 Miss. 461, 5 So. 2d 681 (1942).

§ 27-13-19. Verification of return; surety of foreign corporation; return made by receiver, trustee in bankruptcy or assignee [Repealed effective January 1, 2028].

(1) Returns filed under the provisions of this chapter must be certified to by a written declaration that it is made under the penalties of perjury and must be signed by either the president, vice president or treasurer of the corporation.

(2) If any foreign corporation taxable under this chapter has no office or place of business in this state, such corporation shall file with the state tax commission a surety in an amount to be determined by the commission, not to exceed One Thousand Dollars ($1,000.00), payable to the State of Mississippi, to insure that a timely return shall be prepared, filed and tax paid by such corporation.

(3) In the case of a receiver, trustee in bankruptcy or assignees operating the property or business of a corporation, such receiver, trustee or assignee shall make returns for such corporation in the same manner and form as corporations are required to make returns; and any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation of whose business or property they have custody or control.

SOURCES: Codes, 1942, § 9334; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 10; Laws, 1975, ch. 467, § 6, eff from and after May 2, 1975.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-13-1.

Officers empowered to administer oaths with respect to returns and reports, see § 27-13-65.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-21. Extension of time to file return and pay tax [Repealed effective January 1, 2028].

The commissioner may grant a reasonable extension of time beyond the statutory due date within which to file the return when it is shown to the satisfaction of the commissioner that good cause for such extension exists. In all cases, a copy of the authorized extension of time to file shall be attached to the Mississippi return as authority for the extension for filing returns. For all such extensions granted, authorized or recognized, interest and penalty as provided by this chapter shall apply.

SOURCES: Codes, 1942, § 9322; Laws, 1934, ch. 121; Laws, 1971, ch. 513, § 1; Laws, 1979, ch. 427, § 1; Laws, 1984, ch. 447, § 4, eff from and after passage (approved April 30, 1984).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-23. Delinquent taxes; failure to file return [Repealed effective January 1, 2028].

(1) If a return is timely filed by the taxpayer but the tax is not paid, the commissioner shall make his assessment of tax due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date the commissioner mailed or hand delivered the notice in which to pay the tax due, including penalty and interest as provided in this section, and if the sum is not paid within the sixty-day period, the commissioner shall proceed to collect it under the provisions of Sections 27-13-29 through 27-13-41 of this chapter; provided that within the sixty-day period the taxpayer may appeal to the Board of Review as provided by law.

(2) If no return is made by a taxpayer required by this chapter to make a return, the commissioner shall determine the taxpayer's liability from the best information available, which determination shall be prima facie correct for the purpose of this chapter, and the commissioner shall forthwith make an assessment of the tax so determined to be due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty (60) days from the date the commissioner mailed or hand delivered the notice in which to pay the tax due, including penalty and interest as provided in this section, and if the sum is not paid within the sixty-day period, the commissioner shall proceed to collect it under the provisions of Sections 27-13-29 through 27-13-41 of this chapter; provided that within the sixty-day period the taxpayer may appeal to the Board of Review as provided by law.

(3)(a) Except as otherwise provided in this subsection, interest at the rate of one percent (1%) per month on the total amount of the deficiency or delinquency of the tax from the due date of the return may be added or assessed in addition to the tax due as provided in subsections (1) and (2) of this section.

(b) For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(i) Nine-tenths of one percent (9⁄10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(ii) Eight-tenths of one percent (8⁄10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(iii) Seven-tenths of one percent (7⁄10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(iv) Six-tenths of one percent (6⁄10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(v) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

(4) In case of failure to file a return as required by this chapter, unless it can be shown that the failure is due to reasonable cause and not due to willful neglect, there may be added to the amount required to be shown as tax on the return a penalty of five percent (5%) of the total amount of the deficiency or delinquency of the tax if the failure is for not more than one (1) month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

(5) In case of failure to pay the amount shown as tax on any return specified in subsections (1) and (2) of this section on or before the date prescribed for payment of the tax, determined with regard to any extension of time for payment, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there may be added to the amount shown as tax on the return one-half of one percent (½ of 1%) of the total amount of the deficiency or delinquency of the tax if the failure is for not more than one (1) month, with an additional one-half of one percent (½ of 1%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

SOURCES: Codes, 1942, § 9325; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 5, eff May 1, 1956; Laws, 1971, ch. 513, § 2; Laws, 1979, ch. 427, § 2; Laws, 1991, ch. 524, § 13; Laws, 1992, ch. 407, § 3; Laws, 2005, ch. 499, § 19; Laws, 2009, ch. 492, § 53; Laws, 2014, ch. 476, § 9, eff from and after January 1, 2015.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Penalty for fraudulent reports, see § 27-13-61.

§ 27-13-25. Additional taxes or refunds [Repealed effective January 1, 2028].

(1) If, upon examination of a return made under the provisions of this chapter, it appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. Any overpayment of tax so determined shall be credited or refunded to the taxpayer. If the correct amount of tax is greater than that shown in the return of the taxpayer, the commissioner shall make his assessment of additional tax due by mail or by personal delivery of the assessment to the taxpayer, which assessment shall constitute notice and demand for payment. The taxpayer shall be given a period of sixty

(60) days from the date the commissioner mailed or hand delivered the notice in which to pay the additional tax due, including penalty and interest as provided in this section, and if the sum is not paid within the sixty-day period, the commissioner shall proceed to collect it under the provisions of Sections 27-13-29 through 27-13-41, provided that within the sixty-day period the taxpayer may appeal to the Board of Review as provided by law.

(2) In the case of an overpayment of tax, interest shall be computed under the provisions of Section 27-7-315. In the case of an underpayment of tax, interest at the rate of one percent (1%) per month, except as otherwise provided in this subsection, from the due date of the return may be added or assessed in addition to the additional tax due as provided in subsection (1) of this section. For taxes assessed by the commissioner on or after January 1, 2015, the rate of any interest assessed under this section shall be:

(a) Nine-tenths of one percent (9⁄10 of 1%) per month for such taxes assessed on or after January 1, 2015, and before January 1, 2016;

(b) Eight-tenths of one percent (8⁄10 of 1%) per month for such taxes assessed on or after January 1, 2016, and before January 1, 2017;

(c) Seven-tenths of one percent (7⁄10 of 1%) per month for such taxes assessed on or after January 1, 2017, and before January 1, 2018;

(d) Six-tenths of one percent (6⁄10 of 1%) per month for such taxes assessed on or after January 1, 2018, and before January 1, 2019; and

(e) One-half of one percent (½ of 1%) per month for such taxes assessed on or after January 1, 2019.

(3) In case of failure to pay any additional taxes as assessed under this section, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there may be added to the additional amount assessed a penalty of one-half of one percent (½ of 1%) of the amount of the additional tax if the failure is for not more than one (1) month, with an additional one-half of one percent (½ of 1%) for each additional month or fraction thereof during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate.

SOURCES: Codes, 1942, § 9326; Laws, 1934, ch. 121; Laws, 1940, ch. 115; Laws, 1956, ch. 412, § 5; Laws, 1966, ch. 636, § 1; Laws, 1971, ch. 513, § 3; Laws, 1979, ch. 427, § 3; Laws, 1986, ch. 393, § 8; Laws, 1991, ch. 524, § 14; Laws, 2005, ch. 499, § 20; Laws, 2009, ch. 324, § 1; Laws, 2009, ch. 492, § 54; Laws, 2014, ch. 476, § 10, eff from and after January 1, 2015.

Joint Legislative Committee Note — Section 1 of ch. 324, Laws of 2009, effective from and after its passage (approved March 10, 2009), amended this section. Section 54 of ch. 492, Laws of 2009, effective July 1, 2010 (approved April 6, 2009), also amended this section. As set out above, this section reflects the language of Section 54 of ch. 492, Laws of 2009, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Editor's Note — Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure

or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Laws of 2014, ch. 476, § 18, effective January 1, 2015, provides:

"SECTION 18. Except for the reductions in the rate of interest as set out in Sections 4, 5, 6, 7, 8, 9, 10 and 14 which also contain the effective date of such rate of interest changes, nothing in Sections 1 through 14 of this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the statutes contained in these sections as in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued before the date on which this act goes into effect and for the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws prior to the date on which this act becomes effective."

Sections 1 through 14 of Chapter 476, Laws of 2014, amended the following sections: Sections 27-7-23, 27-7-24, 27-7-37, 27-7-51, 27-7-53, 27-7-315, 27-7-327, 27-7-345, 27-13-23, 27-13-25, 27-65-31, 27-65-35, 27-65-37 and 27-65-39. For a complete listing of Code sections affected by Chapter 476, Laws of 2014, see Table B, Allocation of Acts, in the Statutory Tables Volume.

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws

before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Tax refunds, see § 27-13-47.

Penalty for fraudulent reports, see § 27-13-61.

Investment trust deemed a domestic corporation for purposes of the corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. Penalties.

Chancery court did not commit manifest error by ruling that a taxpayer failed to prove it was entitled to reversal of the Mississippi State Tax Commission's imposition of penalties because it could reverse only if the taxpayer proved that the imposition of penalties was unsupported by substantial evidence presented to the Commission, arbitrary and capricious, beyond the power of the Commission, or in violation of the taxpayer's statutory or constitutional rights, which the taxpayer failed to do. Equifax, Inc. v. Miss. Dep't of Revenue, 125 So. 3d 36 (Miss. 2013), modified by 2013 Miss. LEXIS 604 (Miss. Nov. 21, 2013), writ of certiorari denied by 134 S. Ct. 2872, 189 L. Ed. 2d 833, 2014 U.S. LEXIS 4578, 82 U.S.L.W. 3746 (U.S. June 30, 2014).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Pl and Pr Forms (Rev), State and Local Taxation, Form 383.

§ 27-13-27. Request for administrative dissolution of corporation or organization or for revocation of certificate of authority; setting aside of administrative dissolution or revocation of certificate of authority [Repealed effective January 1, 2028].

(1) If any corporation or organization taxable under this chapter after receiving due process under the provisions of this chapter, shall fail or refuse to pay the tax demanded and determined by the commissioner, together with all penalties and interest shown to be due, or if such corporation or organization shall fail to file a protest against such assessment, or appeal therefrom, then the commissioner, in addition to the other authority conferred upon him in this chapter, may request the administrative dissolution of such corporation or organization pursuant to Sections 79-4-14.20 through 79-4-14.23, or the revocation of the certificate of authority of such corporation or organization pursuant to Section 79-4-15.30 through 79-4-15.33, as the case may be. Whereupon, the commissioner shall notify the Secretary of State of such request for administrative dissolution or revocation of certificate of authority.

(2) Any officer, agent, or employee of any organization subject to the provisions of this chapter, who shall exercise, attempt to exercise or cause to be exercised, any of the rights, privileges, powers or franchises of any such organization after such administrative dissolution or revocation of certificate

of authority shall be deemed to have acted in violation of the provisions of this chapter, and as a penalty therefor, shall be fined a sum not less than One Hundred Dollars ($100.00) and not more than One Thousand Dollars ($1,000.00) to be collected by the Attorney General of the State of Mississippi upon recommendation of the commissioner, by appropriate action in any court of competent jurisdiction and each such act shall be deemed a separate violation of the provisions of this chapter, and the amount of the penalty shall be stated in the action brought by the Attorney General of the State of Mississippi. The penalty herein provided shall be against the person violating the provisions of this chapter and be proceeded against in personam and shall be in addition to the tax, interest, penalty and increase assessed against the organization, nor shall its collection or settlement in any way relieve the organization as such from its liabilities. Provided, however, that the commissioner, for good cause shown in writing, and satisfactory explanation of the delinquency or violation, may recommend the compromise or cessation of the action against the offending officer, agent or employee and the Attorney General of the State of Mississippi shall be governed by the recommendation of the commissioner.

(3) If any organization thus administratively dissolved or for which a certificate of authority has been revoked shall appear, either by its principal officer or officers, or its attorney, within twelve (12) months from the date of such administrative dissolution or revocation of certificate of authority, and make satisfactory explanation of the cause of the default; and pay all taxes due, together with all interest, penalties and increases finally determined by the commissioner to be due, then it shall be the duty of the commissioner to immediately notify the Secretary of State.

(4) Upon the setting aside of such administrative dissolution or revocation of certificate of authority, said organization shall be restored to all rights of which it was deprived by such administrative dissolution or revocation of certificate of authority, and authorized to resume all activities as though said administrative dissolution or revocation of certificate of authority had not been imposed.

(5) If, however, the administrative dissolution or revocation of certificate of authority has not been set aside within a period of twelve (12) months from the date of the original imposition thereof, all rights to have such administrative dissolution or revocation of certificate of authority set aside shall cease; and after the expiration of said twelve-month period, said organization, insofar as being a going concern, with rights to exercise powers originally granted are concerned, shall be considered as nonexistent; and the disposition of assets, and winding up of the affairs of the organization may be accomplished in such manner as may be provided by law.

SOURCES: Codes, 1942, § 9322; Laws, 1934, ch. 121; Laws, 1971, ch. 513, § 1; Laws, 2002, ch. 440, § 1, eff from and after passage (approved Mar. 20, 2002.)

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

JUDICIAL DECISIONS

1. In general.

Corporation has power to sue in corporate name only insofar as state grants that power, and when corporation is suspended it loses all rights acquired by form of organization. Where suspension had been set aside by time amended complaint was filed, and company was thus authorized to resume all activities as though suspension had not been imposed, claim that it lacked power to file suit was not applicable. Bryant Constr. Co. v. Cook Constr. Co., 518 So. 2d 625 (Miss. 1987).

When corporation fails to pay its franchise tax, then chairman of state tax commission may suspend corporation's right to perform any rights acquired by virtue of its status as corporation. Unless and until suspended corporation is dissolved by affirmative act of state, corporation is functionally unable to operate, though it does not cease to exist. Actual effect of suspension is that corporation is deprived of its state-granted power and capacity to function; therefore, any action taken by suspended corporation during time of suspension is beyond powers of corporation, i.e., ultra vires. Bryant Constr. Co. v. Cook Constr. Co., 518 So. 2d 625 (Miss. 1987).

Corporation was without capacity to bring suit in May 31, 1984, where its rights and powers to function as corporation had been suspended on October 4, 1983 pursuant to § 27-13-27, notwithstanding corporation's contention that state's lifting of suspension pursuant to § 27-13-27(3) in July 1984 served to validate actions it took while its powers were suspended. PLM v. E. Randle Co., 797 F.2d 204 (5th Cir. 1986).

The provisions of this section are permissive and require additional affirmative action to accomplish dissolution of a corporation, which accords with the actual practice in the state. Chevron Oil Co. v. Clark, 432 F.2d 280 (5th Cir. 1970).

Provision that corporation is dissolved as a matter of law if the suspension is not satisfied within a period of 12 months from the date of the original imposition thereof is permissive, requiring additional affirmative action to accomplish dissolution of a corporation, rather than self-executing or mandatory. Chevron Oil Co. v. Clark, 432 F.2d 280 (5th Cir. 1970).

The long-standing interpretation given the statute in practice has been that while suspended corporations had no right to be reinstated after one year's suspension, the state nevertheless in its grace may reinstate them upon proper application and payment of back taxes and penalties, thus making the statute not self-executing but requiring further action to effect the dissolution of a corporation. Chevron Oil Co. v. Clark, 432 F.2d 280 (5th Cir. 1970).

After lapse of the prescribed period for reinstatement provided in this section a corporation may not validly consummate any transaction, including a conveyance of property rights. Chevron Oil Co. v. Clark, 291 F. Supp. 552 (S.D. Miss. 1968), aff'd in part, rev'd on other grounds, 432 F.2d 280 (5th Cir. 1970).

RESEARCH REFERENCES

ALR. Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2401, 2415, 2423.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

Law Reviews. 1987 Mississippi Supreme Court Review, Ultra vires and suspended corporations. 57 Miss. L. J. 492, August, 1987.

§ 27-13-29. Enrolling a judgment [Repealed effective January 1, 2028].

If any taxpayer, liable for the payment of franchise taxes, penalties or interest, fails or refuses to pay them after receiving the notice and demands as provided in Section 27-13-23 or 27-13-25, and if such taxpayer has not filed a timely appeal to the board of review as provided by law, the commissioner may file a notice of tax lien for the franchise taxes, penalties, and interest with the circuit clerk of the county in which the taxpayer resides or owns property, which, shall be enrolled on the judgment roll. Immediately upon receipt of the notice of tax lien for franchise taxes, penalties and interest, the circuit clerk shall enter upon the judgment roll, in the appropriate columns, the name of the taxpayer as judgment debtor, the name of the commissioner or Department of Revenue as judgment creditor, the amount of the taxes, penalties and interest, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon all property and rights to property belonging to the taxpayer, both real and personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied. Such judgment shall serve as authority for the issuance of writs of execution, writs of attachments, writs of garnishment or other remedial writs. The commissioner may issue warrants for collection of franchise taxes from such judgments in lieu of the issuance of any remedial writ by the circuit clerk.

Upon failure to pay the taxes imposed under this chapter by any taxpayer who has executed any bond, the commissioner shall give notice of the failure to the sureties of such bond and demand payment of the tax, penalties and interest within ten (10) days. If the sureties of the taxpayer's bond shall fail or refuse to pay the penal sum demanded within the ten (10) days allowed, the commissioner may file a notice of tax lien with the circuit clerk of the county in which the sureties reside or own property, which shall be enrolled upon the judgment roll, and the commissioner may proceed to collect from the sureties as provided in this section for collecting from any judgment debtor.

The commissioner is hereby authorized to pay the clerk's fee for enrolling certificates of indebtedness and any court costs that may be adjudged against the department or commissioner out of funds appropriated by the Legislature to defray expenses of the Department of Revenue.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6; Laws, 2005, ch. 499, § 21; Laws, 2014, ch. 412, § 14, eff from and after Jan. 1, 2015.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Remedial writs, generally, see § 9-1-19.

Enrollment of judgments, generally, see § 11-7-189.

Attachments at law against debtors, see § 11-33-1 et seq.

Garnishment, see § 11-35-1 et seq.

Executions, generally, see § 13-3-111 et seq.

State tax Commission as meaning Department of Revenue, see § 27-13-1.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-31. Warrant for collection of tax [Repealed effective January 1, 2028].

The commissioner may issue a warrant under official seal directed to the sheriff of any county of the state, or to a special agent of the commission, commanding him to immediately seize and sell the real and personal property of the person owning the same found within the county in which the judgment is enrolled for the payment of the amount of tax, penalties, and interest, if any, as set forth in the warrant, and the cost of executing the warrant.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6; Laws, 1976, ch. 380, § 4, eff from and after passage (approved April 26, 1976).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Sheriff's execution and return of process, see § 19-25-37.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-33. Jeopardy assessment and warrant [Repealed effective January 1, 2028].

If the commissioner has cause to believe and believes that the collection of taxes due by any taxpayer will be jeopardized by delay, he may assess such taxes immediately together with damages and interest, and may immediately file with the circuit clerk a notice of tax lien for franchise taxes, penalties, and interest and issue a jeopardy warrant under official seal directed to the sheriff of any county of this state or to a special agent of the tax commission.

The circuit clerk shall proceed as provided in Section 27-13-29, upon receiving a copy of the notice of tax lien from the commissioner. Any tax determined to be due under a jeopardy assessment, shall be a debt due the state and, when thus enrolled upon the judgment roll of the county, shall be the equivalent of any enrolled judgment of the court of record and shall constitute a lien on all the property and rights to property of the judgment debtor.

The sheriff, or the special agent, as the case may be, upon receipt of the jeopardy warrant, shall immediately proceed in accordance with Section 27-13-35. However, where property has been seized under authority of a jeopardy warrant, the taxpayer may file a petition for a hearing and revision of the assessment with the commissioner at any time prior to the date of the sale by the enforcement officer, provided such taxpayer executes a supersedeas surety bond with a surety company, authorized to do and doing business in this state, for double the amount of the assessment. Such bond shall be conditioned that any taxes, penalties, interest, and costs adjudged to be due after the hearing will be paid promptly upon order of the tax commission.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6; Laws, 1976, ch. 380, § 5, eff from and after passage (approved April 26, 1976).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Tax Commission as meaning Department of Revenue, see § 27-13-1.

Sheriff's execution and return of process, see § 19-25-37.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-35. Execution by sheriff or special agent; fees; disposition of property [Repealed effective January 1, 2028].

The sheriff, or special agent of the Tax Commission, upon receipt of a warrant or a jeopardy warrant shall immediately seize any property of the taxpayer named in the warrant, in all respects, with like effect, and in the manner prescribed by law with respect to executions of judgments, and he shall execute such warrant and return it to the commissioner, and pay to him the money collected by virtue thereof by the date specified therein, but not to exceed sixty (60) days.

The sheriff or special agent shall be entitled to the fees for his services in the same amount, and to be collected in like manner, as provided by Sections 25-7-19 and 25-7-21, Mississippi Code of 1972, for like services under a writ of execution. Provided, however, that the minimum total of all such fees shall be ten dollars ($10.00). All such fees collected by a special agent of the tax commission shall be paid to the tax commission and deposited in a fund to be expended by the chairman to help defray the cost of carrying out the provisions of the chapter. Provided, further, that when a warrant issued to the sheriff shall be withdrawn by the commissioner prior to its expiration date, the commissioner is authorized to pay to the sheriff the fees allowed by law for services actually performed and costs actually incurred, out of money collected as fees from the taxpayer, or from funds appropriated for the operation of the tax commission.

Real property shall be disposed of according to Section 13-3-163, Mississippi Code of 1972, and personal property shall be disposed of according to Section 13-3-165, Mississippi Code of 1972. However, perishable personal property may be disposed of as provided by Section 13-3-167, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6; Laws, 1976, ch. 380, § 6, eff from and after passage (approved April 26, 1976).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Executions, generally, see § 13-3-111 et seq.

Sheriff's execution and return of process, see § 19-25-37.

Sheriff's liability for failure to make return, execute process, or pay over collection, see §§ 19-25-41, 19-25-45.

Tax Commission as meaning Department of Revenue, see § 27-13-1.

Appointment, powers, and credentials of special agents of the tax commission, see § 27-13-65.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-37. Commissioner may bid at sales [Repealed effective January 1, 2028].

When any property is offered for sale under authority of a warrant or writ of execution for the collection of franchise taxes, penalties, or interest, and no bid is submitted equal to the reasonable value of the property, the commissioner or his agent may bid therefor on behalf of the State of Mississippi an amount not to exceed the amount of the warrant and costs, and, if declared the successful bidder for the particular piece of property, such title as may be conveyed shall pass to the state, and the state's interest in the property may then be sold at public or private sale to the best interest of the state; provided, however, that the taxpayer shall have a period of sixty days from the date of such sale within which to redeem such property, except perishables, by payment of the entire tax due together with all penalties, interest, and lawful costs. In the event of such redemption, the commissioner shall issue, or cause to be issued, his certificate of redemption upon request of the taxpayer, which certificate of redemption may be filed as a deed in the appropriate public office.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6, eff from and after passage (approved April 13, 1971).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Bidding off land by Commissioner of Revenue at tax sales, generally, see § 27-3-43.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-39. Alias executions [Repealed effective January 1, 2028].

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the State of Mississippi for which distraint or seizure is made, the commissioner may, thereafter, and as often as the same may be necessary, issue alias warrants or have issued alias writs of execution authorizing the sheriff or special agent of the tax commission to proceed to seize and sell in like manner any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6, eff from and after passage (approved April 13, 1971).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499 § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Executions, generally, see § 13-3-111 et seq.

Tax Commission as meaning Department of Revenue, see § 27-13-1.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-41. Sheriff and special agent not personally liable [Repealed effective January 1, 2028].

Every warrant issued to a sheriff of any county of this state or to a special agent of the state tax commission shall provide that the state tax commission will indemnify and save harmless the said sheriff or special agent against all damages which he may sustain in consequence of the seizure or sale of the property, and the commissioner is hereby authorized to pay all obligations which may accrue by reason of the issuance and execution of any warrant authorized by this chapter, out of funds appropriated by the legislature to defray expenses of the state tax commission. Any claimant accepting any payment authorized to be made by the commissioner under the provisions of this section shall be barred of any action against the sheriff or special agent of the tax commission for damages sustained by the same as a consequence of the levying of process authorized by this chapter.

SOURCES: Codes, 1942, § 9329; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 7; Laws, 1971, ch. 513, § 6, eff from and after passage (approved April 13, 1971).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Executions, generally, see § 13-3-111 et seq.

State Tax Commission as meaning Department of Revenue, see § 27-13-1.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§§ 27-13-43 and 27-13-45. Repealed.

Repealed by Laws of 2005, ch. 499, § 36 effective from and after July 1, 2005.

§ 27-13-43. [Codes, 1942, § 9327; Laws, 1934, ch. 121; Laws, 1971, ch. 513, § 4, eff from and after passage (approved April 13, 1971).]

§ 27-13-45. [Codes, 1942, § 9328; Laws, 1934, ch. 121; Laws, 1956, ch. 412, § 6; Laws, 1971, ch. 513, § 5, eff from and after passage (approved April 13, 1971).]

Joint Legislative Committee Note — Section 3 of ch. 465, Laws of 2005, effective from and after July 1, 2005 (approved March 29, 2005), amended this section. Section 36 of ch. 499, Laws of 2005, effective from and after July 1, 2005 (approved April 21, 2005), repealed this section. As set out above, this section reflects the repeal by Section 36 of ch. 499, Laws of 2005, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Former §§ 27-13-43 and 27-13-45 provided for hearings and appeals from certain actions of the State Tax Commission.

Laws 2005, ch. 499, § 38, effective July 1, 2005, provides as follows:

"SECTION 38. Sections 1 through 10 of this act shall be codified as a separate chapter in Title 27, Mississippi Code of 1972."

§ 27-13-47. Refunds [Repealed effective January 1, 2028].

If the amount already paid under the requirements of this chapter is in excess of the amount determined to be properly due, then the amount of such overpayment shall be credited to the organization, and having been so credited shall be refunded to the extent of its excess over any debts outstanding against the said organization for taxes imposed by this chapter. Such refund shall be effected in the manner provided in Section 27-73-1, Mississippi Code of 1972.

An organization may appeal to the commissioner for a refund of any tax overpayment at any time within three (3) years from the time of said payment and a final determination shall be made in the same manner as is provided in this chapter for appeals from assessments.

SOURCES: Codes, 1942, § 9330; Laws, 1934, ch. 121; Laws, 1956, ch 412, § 8, eff May 1, 1956.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 965 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 383.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 411.

CJS. 85 C.J.S., Taxation § 1174 et seq.

§ 27-13-49. Limitations of actions [Repealed effective January 1, 2028].

(1) Returns shall be examined by the commissioner or his duly authorized agents within three (3) years from the due date or the date the return was filed, whichever is later, and no determination of a tax overpayment or deficiency shall be made by the commissioner after the expiration of the three-year period except as provided in this section.

(2) When an examination of a return made under this chapter has been commenced, and the taxpayer notified of the examination by certified mail, or personal delivery by an agent of the commissioner within the three-year examination period provided in subsection (1) of this section, the determination of the correct tax liability may be made by the commissioner after the expiration of the three-year examination period, provided that the determination shall be made within one (1) year after the expiration of the three-year examination period provided for in subsection (1) of this section; however, this limitation and the limitation provided for in subsection (1) of this section shall not apply:

(a) To any tax period for which the taxpayer failed to file a return, in which case the tax, including any applicable penalties and interest, may be assessed by the commissioner at any time and the tax, penalties and/or interest so assessed may be collected by the commissioner as otherwise provided by law.

(b) In the case of a false or fraudulent return with the intent to evade tax. In such a case the commissioner is authorized to compute, determine, and assess at any time the estimated amount of tax due on the return, including any applicable penalties and interest, from any information in his or her possession, and after the tax, penalties and/or interest are assessed, to collect them as otherwise provided by law.

(c) In the case of an agreement in writing entered into by the commissioner and the taxpayer, made prior to the expiration of the applicable time periods provided for in subsections (1) and (2) of this section, consenting to the examination of a return. In such a case the determination of a tax overpayment or deficiency and/or the issuance of an assessment may be made within the agreed upon period. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period.

(d) In a case in which a taxpayer requests an extension of time for filing any return required by this chapter, and the request is granted. In such a case the limitation of time for examining the return and determining any tax overpayment or assessing any tax deficiency from the return shall be extended for a like period.

(3) Taxpayers shall keep and maintain an accurate and complete set of records and other information sufficient to allow the department to determine the correct amount of tax due. The records and other information shall be open and available for inspection by the department upon request at a reasonable

time and location. Refusal or delay by the taxpayer to provide documentation for examination upon the department's request shall result in an assessment being made from any information available, which shall be prima facie correct.

(4) Where the federal income tax return of a taxpayer has been changed by the Internal Revenue Service, the three-year examination period provided in subsection (1) of this section shall not be applicable, insofar as the Mississippi franchise tax liability is affected by the specific changes made by said Internal Revenue Service. However, no additional assessment or no refund shall be made under the provisions of this chapter after three (3) years from the date the Internal Revenue Service disposes of the tax liability in question.

(5) A taxpayer may apply to the commissioner for revision of any return filed under this chapter at any time within three (3) years from the due date, or the date the return was filed, whichever is later.

SOURCES: Codes, 1942, § 9331; Laws, 1934, ch. 121; Laws, 1940, ch. 115; Laws, 1942, ch. 137; Laws, 1971, ch. 513, § 7; Laws, 2005, ch. 368, § 1; Laws, 2013, ch. 470, § 2, eff from and after Jan. 1, 2013.

Editor's Note — Laws of 2013, ch. 470, § 7, effective January 1, 2013, provides:

"SECTION 7. Nothing in this act shall affect or defeat any refund claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act becomes effective, whether such refund claims, assessments, appeals, suits or actions have been begun or filed before the date on which this act becomes effective or are begun or filed thereafter; and the provisions of the tax laws of this state in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of any refund claim, assessment, appeal, suit, right or cause of action for taxes paid, due or accrued under the laws of this state for any tax period and/or tax year beginning before the date on which this act goes into effect, for the collection and enrollment of liens for any taxes due or accrued for any tax period and/or tax year beginning before the date on which this act goes into effect and for the execution of any warrant under such laws for a tax period and/or tax year beginning before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws in regard to any tax period and/or tax year beginning prior to the date on which this act becomes effective.

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Limitation of actions, generally, see § 15-1-1 et seq.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

RESEARCH REFERENCES

ALR. Suspension of running of period of limitation, under 26 U.S.C.S. § 6503, for federal tax assessment or collection. 160 A.L.R. Fed. 1.

§ 27-13-51. Tax as a personal debt; joint and several liability for subchapter S subsidiaries, certain limited liability companies and entities required to file for federal income tax purposes on the activity of those subsidiaries and companies [Repealed effective January 1, 2028].

(1) The tax provided by this chapter, together with all interest, increases and penalties, is in addition to all other taxes, and shall become, from the time it is due and payable, a personal debt, from the organization liable to pay the same, to the State of Mississippi.

(2) An entity that is required to file and report for federal income tax purposes on the activity conducted in Mississippi of a qualified subchapter S subsidiary which is subject to income taxation in the manner prescribed in Section 27-8-7, and the qualified subchapter S subsidiary, shall each be jointly and severally liable for franchise taxes levied by this chapter together with damages and interest when such taxes are due and unpaid.

(3) An entity that is required to file and report for federal income tax purposes on the activity conducted in Mississippi of a single member limited liability company which is not classified as a corporation (and thus disregarded) which is subject to tax in the manner prescribed in Section 79-29-112, and the single member limited liability company, shall each be jointly and severally liable for franchise taxes levied by this chapter together with damages and interest when such taxes are due and unpaid.

SOURCES: Codes, 1942, § 9340; Laws, 1934, ch. 121; Laws, 2000, ch. 479, § 3, eff from and after Jan. 1, 2000.

Editor's Note — Section 79-29-112, referred to in (3), was repealed by Laws of 2010, ch. 532, §§ 3 and 4, effective January 1, 2011.

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Action to recover tax, penalty and interest, see § 27-35-5.

§ 27-13-53. Departments of state government authorized to furnish information to chairman of State Tax Commission [Repealed effective January 1, 2028].

Departments of Mississippi state government are hereby specifically authorized to furnish to the commissioner, upon request of his authorized agents and employees, any information from the public records in their custody.

SOURCES: Codes, 1942, § 9324; Laws, 1934, ch. 121; Laws, 1970, ch. 314, § 1; Laws, 2001, ch. 429, § 2, eff from and after passage (approved Mar. 13, 2001.)

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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Cross References — Commissioner as meaning Commissioner of Revenue of the Department of Revenue, see § 27-13-1.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-55. Disposition of funds [Repealed effective January 1, 2028].

All moneys collected under the provisions of this chapter shall be paid into the state treasury, as by statute provided, but the commissioner shall not be required in any application to the state auditor of public accounts for receive warrants, to supply any information to the state auditor of public accounts other than the nature of the tax, interest, damages or increases collected and the amounts thereof.

SOURCES: Codes, 1942, § 9323; Laws, 1934, ch. 121.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Commissioner as meaning Commissioner of Revenue of the Department of Revenue, see § 27-13-1.

Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-57. Information kept secret; release of certain information under certain circumstances [Repealed effective January 1, 2028].

(1) Except in accordance with the proper judicial order, or as otherwise provided in this section or as authorized in Section 27-4-3, it shall be unlawful for the Commissioner of Revenue or any deputy, agent, clerk or other officer or employee of the Department of Revenue to divulge or make known in any manner any particulars set forth or disclosed in any report or return required under this chapter. When a combined report or return is filed as authorized by Section 27-13-17(5), each report or return which composes the combined return shall be considered separate for the purpose of any examinations authorized in this section and only particulars relating to the specific return or report set forth in the judicial order or as otherwise provided shall be considered lawfully divulged. The term "proper judicial order" as used in this section shall not include subpoenas or subpoenas duces tecum, but shall include only those orders entered by a court of record in this state after furnishing notice and a hearing to the taxpayer and the Department of Revenue. The court shall not authorize the furnishing of such information unless it is satisfied that the information is needed to pursue pending litigation wherein the return itself is in issue, or the judge is satisfied that the need for furnishing the information outweighs the rights of the taxpayer to have such information secreted. Nothing in this section shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or any other attorney representing the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty imposed by this chapter. Reports and returns shall be preserved in accordance with approved records control schedules. No records, however, may be destroyed without the approval of the Director of the Department of Archives and History.

However, information relating to possible tax liability of other states or the federal government may be furnished to the revenue department of those states or the federal government when those states or the federal government grant a like comity to Mississippi.

(2) The State Auditor and the employees of his office shall have the right to examine only such tax returns as are necessary for auditing the Department of Revenue, and the same prohibitions against disclosure which apply to the Department of Revenue shall apply to the State Auditor and his office.

(3) Officers and employees of the Mississippi Development Authority who execute a confidentiality agreement with the Department of Revenue shall be authorized to discuss and examine information to which this section applies at the offices of the Mississippi Department of Revenue. This disclosure is limited to information necessary to properly administer the programs under the jurisdiction of the Mississippi Development Authority. The Department of

Revenue is authorized to disclose to officers and employees of the Mississippi Development Authority who execute a confidentiality agreement the information necessary under the circumstances. The same prohibitions against disclosure which apply to the Department of Revenue shall apply to the officers or employees of the Mississippi Development Authority.

(4) Information required by the University Research Center to prepare the analyses required by Sections 57-13-101 through 57-13-109 shall be furnished to the University Research Center upon request. It shall be unlawful for any officer or employee of the University Research Center to divulge or make known in any manner any particulars set forth or disclosed in any information received by the center from the Department of Revenue other than as may be required by Sections 57-13-101 through 57-13-109 in an analysis prepared pursuant to Sections 57-13-101 through 57-13-109.

(5) Information required by the Mississippi Development Authority to prepare the reports required by Section 57-1-12.2 shall be furnished to the Mississippi Development Authority upon request. It shall be unlawful for any officer or employee of the Mississippi Development Authority to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the Mississippi Development Authority from the Department of Revenue other than as may be required by Section 57-1-12.2 in a report prepared pursuant to Section 57-1-12.2.

(6) Information necessary to comply with Chapter 13, Title 85 may be furnished to financial institutions. It shall be unlawful for any officer or employee of the financial institution to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any information received by the financial institution from the Department of Revenue other than as may be authorized by Chapter 13, Title 85.

(7) Nothing in this section shall prohibit the Commissioner of Revenue from making available information necessary to recover taxes owing the state pursuant to the authority granted in Section 27-75-16, Mississippi Code of 1972.

(8) Any person violating the provisions of this section shall be guilty of a misdemeanor and, on conviction, shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state he shall be dismissed from office and be incapable of holding any public office in this state for a period of five (5) years thereafter.

SOURCES: Codes, 1942, § 9333; Laws, 1934, ch. 121; Laws, 1975, ch. 467; § 7; ch. 516, § 3; Laws, 1981, ch. 501, § 23; Laws, 1984, ch. 447, § 5; Laws, 1988, ch. 349, § 4; Laws, 2010, ch. 385, § 3; Laws, 2010, ch. 388, § 4; brought forward without change, Laws, 2010, ch. 481, § 4; Laws, 2014, ch. 517, § 10; Laws, 2017, ch. 407, § 7, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 4 of ch. 481, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 4 of ch. 388, Laws of 2010, effective July 1, 2010 (approved March 17, 2010) and Section 3 of ch. 385, Laws of 2010, effective July 1, 2010 (approved March 17, 2010), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 481, Laws of 2010, which contains language that specifically provides that it supersedes § 27-13-57 as amended by Laws of 2010, chs. 385 and 388.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the internal statutory references. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2017 amendment added (6) and redesignated the remaining subsections accordingly.

Cross References — Privileged communications, see § 13-1-21.

Consent of director of department of archives and history to be obtained prior to destruction of public records, see §§ 25-59-21, 25-59-31.

Archives and Records Management Law, generally, see § 25-59-21 et seq.

Notice, hearing, and rights of taxpayer with regard to confidentiality of state and federal personal income tax returns, see § 27-7-83.

Investment trust shall be deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-13-59. Commissioner to give receipt [Repealed effective January 1, 2028].

It shall be the duty of the commissioner to give to each organization making payment of the tax imposed by this chapter in cash a full written, or printed receipt, stating the amount paid and the particular account for which such payment was made; and when so requested such receipt shall be given when payment is made by other than legal tender.

SOURCES: Codes 1942, § 9335; Laws, 1934, ch. 121.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

§ 27-13-61. Fraudulent reports [Repealed effective January 1, 2028].

Any person who knowingly makes or presents or aids, or assists in the preparation or presentation of a false or fraudulent report, return, affidavit or document authorized or required by this chapter to be filed with the commissioner or who knowingly procures, counsels, or advises the preparation or presentation of such false or fraudulent report, return or affidavit, or document, or who knowingly changes, alters, or amends, or knowingly procures, counsels or advises such change, alteration or amendment of the books of any organization liable under this chapter to file a return, affidavit or pay a tax, with intent to defraud the State of Mississippi, shall be guilty of a felony and upon conviction thereof shall be fined not more than One Thousand Dollars ($1,000.00), or imprisoned in the penitentiary for not more than five (5) years, or both.

SOURCES: Codes, 1942, § 9336; Laws, 1934, ch. 121.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-

29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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Cross References — Investment trust deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, see § 79-15-25.

Penalty for delinquent taxes, see § 27-13-23.

Penalty for incorrect returns, see § 27-13-25.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 27-13-63. Corporations and organizations exempt from tax [Repealed effective January 1, 2028].

The following organizations shall be exempt from taxation under this chapter:

(a) Fraternal beneficiary societies, orders or associations.

(b) Mutual savings banks, domestic or foreign; savings and loan associations organized under the laws of the State of Mississippi or the United States which have no outstanding capital stock; and farm loan associations, when organized and operated on a nonprofit basis and for public purposes.

(c) Nonprofit cemetery corporations; religious, charitable, educational or scientific associations or institutions, including any community chest, funds or foundations organized and operated exclusively for religious, charitable, scientific or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(d) Business leagues, labor organizations, agricultural or horticultural associations, chambers of commerce, or boards of trade not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

(e) Civic leagues and social clubs or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(f) Clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member.

(g) Farmers, fishermen and fruit growers cooperatives or other like organizations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses and on the basis of the quantity of produce furnished by them, and other nonprofit agricultural associations organized and operated under the provisions of the cooperative marketing laws of this state.

(h) Nonprofit cooperative electric power associations or corporations, or like associations, when organized and operated for public purposes and when no part of the income inures to the benefit of any private stockholder or individual.

(i) Insurance companies which are qualified with and regulated by the Commissioner of Insurance.

(j) State, county or community fair associations, including any fair association whose fair is held for the benefit of the public where no dividends are declared to the stockholders thereof, and where the proceeds thereof are used exclusively for the operation, maintenance and improvement of such fair.

(k) Any corporation whose sole function is to own and operate a grammar school, junior high school, high school or military school within this state, no part of the net earnings of which inures to the benefit of any private stockholder, group or individual.

(*l*) Any organization or corporation whose charter specifically states that it is not organized for profit and where no part of the net earnings of which inures to the benefit of any private stockholder, group or individual.

SOURCES: Codes, 1942, § 9316; Laws, 1934, ch. 121; Laws, 1952, ch. 405; Laws, 1970, ch. 543, § 1; Laws, 1975, ch. 467, § 8; Laws, 1978, ch. 410, § 3; Laws, 1987, ch. 422, § 50; Laws, 2014, ch. 402, § 1, eff from and after passage (approved March 19, 2014.)

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

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before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Applicability of this section to the calculation of the corporate franchise tax on the basis of the value of capital employed within the state, see § 27-13-9.

RESEARCH REFERENCES

ALR. What constitutes church, religious society, or institution exempt from property tax under state constitutional or statutory provisions. 28 A.L.R.4th 344.

What is "business league" entitled to federal tax exemption under § 501(c)(6) of Internal Revenue Code of 1954 (26 USCS § 501(c)(6)). 48 A.L.R. Fed. 187.

What is an "insurance company" under § 831(a)(1) of Internal Revenue Code of 1954 (26 USCS § 831(a)(1)), or its predecessors, providing for tax on insurance companies other than life or mutual. 49 A.L.R. Fed. 452.

§ 27-13-65. Administration of chapter [Repealed effective January 1, 2028].

(1) **Jurisdiction.** The commissioner shall have exclusive jurisdiction and be charged with the administration and enforcement of the provisions of this chapter, except as otherwise provided.

(2) **Examine books.** The commissioner, for the purpose of ascertaining the correctness of any return, or for the purpose of making a return where none has been made, is hereby authorized, by any agent designated by the commissioner, for that purpose, to examine any books, papers, records or memoranda, bearing upon the matter required to be included in the return, and may require the attendance of persons rendering a return or of any officer or employee of such person, or of any person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

(3) **Summons.** If any person summoned to appear under this chapter to testify, or produce books, papers or other data, shall refuse to do so, the chancery court for the district in which such person resides shall have jurisdiction by appropriate process to compel attendance, testimony or production of books, papers or other data.

(4) **Employees.** The commissioner, with the approval of the Governor, may appoint and remove such officers, agents, deputies, clerks and employees as he may deem necessary, such persons to have such duties and powers as the commissioner may, from time to time, prescribe. The salaries of all officers, agents and employees employed by the commissioner shall be such as he may prescribe, with the approval of the Governor, not to exceed such amounts as may be appropriated by the Legislature, and the members of the commission and such officers, agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties not to exceed the amount appropriated therefor by the Legislature.

(5) **Special agents.** The commissioner shall designate certain special agents appointed under this section and evidenced by a written certificate of appointment under the seal of the commission, of which judicial notice shall be taken by all courts of this state. Such agents, when in possession of a warrant issued under authority of this chapter, shall have all the powers and duties of the sheriff in enforcing the provisions of the chapter relating to the warrant thus issued, and in making arrests of persons obstructing or seeking to obstruct the execution of such warrant, or in serving any writ, notice or order connected with the enrolled judgment for which the warrant is issued by whatever officer or authority of court issued.

(6) **Employees bond.** The commissioner may require such of the officers, agents and employees, as he may designate, to give bond for the faithful performance of their duties, in such form and with such securities as he may determine, and all premiums on such bonds shall be paid by the commissioner out of the monies appropriated for the purposes of this chapter.

(7) **Administer oath.** All officers empowered by law to administer oaths and the members of the commission, and such officers as it may designate, shall have power to administer an oath to any person or to take the acknowledgment of any person in respect to any return or report required by this chapter or the rules and regulations of the commissioner.

(8) **Credentials.** All agents of the commissioner shall have, for identification purposes, proper credentials signed by the chairman of the commission.

(9) **Statistics.** The commissioner shall prepare and publish annually statistics reasonably available with respect to the operation of this law, as he may deem pertinent and valuable.

(10) Repealed by Laws, 2005, ch. 499, § 22, eff from and after July 1, 2005.

SOURCES: Codes, 1942, § 9322; Laws, 1934, ch. 121; Laws, 1971, ch. 513, § 1; Laws, 2005, ch. 499, § 22, eff from and after July 1, 2005.

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws

before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Subpoena for witnesses, see §§ 13-3-93, 99-9-11.

Out-of-state audit of books to determine tax liability, see §§ 27-3-63, 27-3-65.

Extension of time to file return and pay tax, see § 27-13-21.

Suspension of corporation from doing business for nonpayment of tax, see § 27-13-27.

§ 27-13-67. Regulations [Repealed effective January 1, 2028].

The commissioner may from time to time make such rules and regulations, not inconsistent with this chapter as he may deem necessary to enforce its provisions.

SOURCES: Codes 1942, § 9322; Laws, 1934, ch. 121; Laws, 1971, ch. 513, § 1, eff from and after passage (approved April 13, 1971).

Editor's Note — Laws of 2016, ch. 499, § 5, effective January 1, 2016, provides:

"SECTION 5. Sections 27-13-1, 27-13-3, 27-13-5, 27-13-7, 27-13-8, 27-13-9, 27-13-11, 27-13-13, 27-13-15, 27-13-17, 27-13-19, 27-13-21, 27-13-23, 27-13-25, 27-13-27, 27-13-29, 27-13-31, 27-13-33, 27-13-35, 27-13-37, 27-13-39, 27-13-41, 27-13-47, 27-13-49, 27-13-51, 27-13-53, 27-13-55, 27-13-57, 27-13-59, 27-13-61, 27-13-63, 27-13-65 and 27-13-67, Mississippi Code of 1972, which are the corporation franchise tax law, are repealed from and after January 1, 2028."

Laws of 2016, ch. 499, § 6, effective January 1, 2016, provides:

"SECTION 6. This act shall be known and may be cited as the 'Taxpayer Pay Raise Act of 2016.' "

Laws of 2016, ch. 499, § 7, effective January 1, 2016, provides:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or corporation franchise tax law before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the income tax laws and corporation franchise tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

CHAPTER 15

Statewide Privilege Taxes

General Provisions 27-15-1
Insurance Taxes 27-15-81
Public Utilities 27-15-151
General Administrative Provisions Applicable to Chapter 27-15-201
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GENERAL PROVISIONS

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27-15-59. Repealed.

§ 27-15-1. Citation of chapter.

This chapter may be cited as the state-wide privilege tax law.

SOURCES: Codes, 1942, § 9427; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 1, eff from and after June 1, 1944.

Cross References — Local privilege tax code, see § 27-17-1 et seq.

Tax imposed on premiums for legal expense insurance, see § 83-49-45.

JUDICIAL DECISIONS

1. In general.

Headlines or lead lines in the State-Wide Privilege Tax Act constitute a part of the statute and are not ordinary titles. Bailey v. Montgomery Ward & Co., 222 Miss. 544, 76 So. 2d 813 (1955).

This act (Laws 1944, chapter 138), being the later act, is controlling as to any conflicts between it and the local privilege tax law (Laws 1944, chapter 137). Craig v. Dun & Bradstreet, 202 Miss. 207, 30 So. 2d 798 (1947).

RESEARCH REFERENCES

ALR. Failure to obtain occupational or business license or permit as defense to tort action. 13 A.L.R.2d 157.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 1, 6, 7, 9, 47, 65.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 1-5.

CJS. 53 C.J.S., Licenses §§ 50, 52.

§ 27-15-3. Definitions.

As used in this chapter:

(a) "Population" means the population as shown by the last census made by the United States; provided, that when any municipality makes and certifies an enumeration, as provided by law, it shall mean the population shown by such enumeration.

(b) "Person" or "company," herein used interchangeably, shall be taken to include any individual, firm, partnership, joint adventure, association, corporation, estate, trust, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Year" and "annually" means either the calendar year, or a period of twelve (12) calendar months.

(d) "Capacity, " when used with reference to manufacturing establishments, means and shall be determined from the rated capacity of the machinery installed by the manufacturer thereof.

(e) "Business" shall include all activities or acts personal, professional, or corporate, engaged in or caused to be engaged in with the object of gain, profit, benefit, or advantage, either direct or indirect, or following or engaging in any trade, calling or profession, and all things which occupy the time, attention and labor of men for the purpose of a livelihood or profit.

(f) "Place of business" means a store, shop, counting room, office, factory, or other location or locations whether in a building, enclosed space, or in any undefined place or places where any business as herein defined is done, conducted, or carried on.

(g) "State-wide license" means a license issued by the Commissioner of Revenue, Commissioner of Insurance, or other officer required to collect the tax usable, good and valid, in each and every county in the state, unless otherwise limited and it shall be the authority of the licensee to engage in the business designated for the period of time under the conditions specified therein, and at the place or places stated, if the business carried on be at a definite place.

(h) "State-wide tax" means the tax paid or imposed for a state-wide license.

(i) "Officer" or "collector" when used with reference to officers whose duty it is to collect privilege taxes, means and includes every officer of the State of Mississippi, subdivisions or departments thereof whose duty it is to collect privilege taxes as by law provided.

(j) "Commission," "State Tax Commission" or "Tax Commission" means the Department of Revenue.

(k) "Tax commissioner, " "State Tax Commissioner," "Chairman of the State Tax Commission," "chairman" or "commissioner" means the Commissioner of Revenue of the Department of Revenue.

(*l*) "Taxpayer" means any person liable for any tax hereunder in addition to the usual meaning of such word.

SOURCES: Codes, 1942, § 9427; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 1; Laws, 2009, ch. 492, § 55, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to the Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 42-44.

CJS. 53 C.J.S., Licenses § 51 et seq.

§ 27-15-5. Applicability and effect of chapter.

All privilege taxes levied and imposed by this chapter shall be paid in addition to any and all other taxes, and, except to the extent otherwise provided by Section 27-15-7, the provisions of this chapter shall not affect the operation of any other sections of the Mississippi Code of 1972 or other laws providing for the imposition, levy and collection of privilege taxes, including but not limited to privilege taxes on burial associations, chain stores, and the privilege taxes imposed by the Mississippi Levee District and the Yazoo-Mississippi Delta Levee District, nor shall the provisions of this chapter affect the operation of the sales tax law, nor shall the provisions of this chapter in any wise affect any law imposing a tax or fee or penalty, including filing fees, the fire marshal's fee, penalties or fees or charges imposed and collected by the commissioner of insurance as now provided, or may be hereafter provided, by the laws of Mississippi.

SOURCES: Codes, 1942, §§ 9669, 9693, 9694; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, §§ 50, 69, 70, eff from and after June 1, 1944.

Cross References — Corporation franchise tax, see § 27-13-1 et seq.
Applicability and effect of the local privilege tax law, see § 27-17-5.
Motor vehicle privilege taxes, see § 27-19-1 et seq.
Finance company privilege taxes, see § 27-21-1 et seq.
Severance taxes, see § 27-25-1 et seq.
Vending and amusement machine taxes, see § 27-27-1 et seq.
Sales tax, see § 27-65-1 et seq.
Use or compensating taxes, see § 27-67-1 et seq.
Tobacco tax, see § 27-69-1 et seq.
Alcoholic beverage taxes, see § 27-71-1 et seq.
Taxes on light wines and beer, see § 27-71-301 et seq.
Taxes for defraying expenses of state fire marshal, see § 45-11-5.
Small loan privilege tax, see § 75-67-101 et seq.
Taxation of credit unions, see § 81-13-63.
Privilege tax on burial associations, see § 83-37-21.

Under Former Law

1. In general.

Payment of the contractor's privilege tax by a foreign corporation did not relieve it of the requirement that it obtain a certificate of authority to do business from the secretary of state and, absent such certificate, the contractor was not entitled to sue in state court to enforce a construction lien. Town & Country Plumbing Co. v. Delta Real Estate Dev., Inc., 357 So. 2d 126 (Miss. 1978).

Headlines or lead lines in the State-Wide Privilege Tax Law constitute a part of the statute and are not ordinary titles. Bailey v. Montgomery Ward & Co., 222 Miss. 544, 76 So. 2d 813 (1955).

The section heading "Sewing Machine Agents and Agencies," is part of the statute and therefore under the terms of the statute itself a tax is imposed only upon sewing machine agents and agencies, and not upon merchants selling goods, wares, and merchandise, and selling as an incident thereof sewing machines which they own as part of their own inventory. Bailey v. Montgomery Ward & Co., 222 Miss. 544, 76 So. 2d 813 (1955).

Where a retail store is not a sewing

machine agent or agency, but is in the general merchandise business, selling its own sewing machine as an independent contractor, and has paid the local privilege taxes, the retail store is not subject to the state-wide privilege taxes. Bailey v. Montgomery Ward & Co., 222 Miss. 544, 76 So. 2d 813 (1955).

§ 27-15-7. Levy of taxes by counties, municipalities and levee districts on privileges restricted.

The privileges taxed by this chapter shall not be taxed by the board of supervisors of any county; nor by any municipalities except as may be herein provided.

The Mississippi Levee District and the Yazoo-Mississippi Delta Levee District, and any other levee district authorized by law to levy privilege taxes, shall not levy any tax upon any privilege upon which a state-wide tax is levied under this chapter or any other law, except privileges upon public utilities and common carriers, and insurance companies.

SOURCES: Codes, 1942, § 9694; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 70, eff from and after June 1, 1944.

§ 27-15-9. Classification of municipalities.

For the purpose of this chapter the municipalities of the state are hereby divided into seven classes, numbered from one (1) to seven (7), which classes shall be according to the population thereof, as follows:

Class No. 1 shall include all municipalities having a population of twenty-five thousand (25,000) inhabitants or more.

Class No. 2 shall include all municipalities having a population of fifteen thousand (15,000) inhabitants, and less than twenty-five thousand (25,000) inhabitants.

Class No. 3 shall include all municipalities having a population of ten thousand (10,000) inhabitants, and less than fifteen thousand (15,000) inhabitants.

Class No. 4 shall include all municipalities having a population of five thousand (5,000) inhabitants, and less than ten thousand (10,000) inhabitants.

Class No. 5 shall include all municipalities having a population of three thousand (3,000) inhabitants, and less than five thousand (5,000) inhabitants.

Class No. 6 shall include all municipalities having a population of one thousand (1,000) inhabitants, and less than three thousand (3,000) inhabitants.

Class No. 7 shall include all municipalities having a population of five hundred (500) inhabitants, and less than one thousand (1,000) inhabitants.

The term “elsewhere in the state” as used in this chapter shall include all municipalities having a population of less than five hundred (500) inhabitants, and all other places outside of any municipality.

SOURCES: Codes, 1942, § 9428; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 2, eff from and after June 1, 1944.

§ 27-15-11. Privilege taxes imposed.

Every person desiring to engage in any business, or exercise any privilege hereafter specified shall first, before commencing same, apply for, pay for, and procure from the state tax commissioner or commissioner of insurance, a privilege license authorizing him to engage in the business or exercise the privilege specified therein, and the amount of tax shown in the following sections is hereby imposed for the privilege of engaging or continuing in the business set out therein.

SOURCES: Codes, 1942, § 9429; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 3, eff from and after June 1, 1944.

Cross References — State tax commissioner as meaning Commissioner of Revenue of the Department of Revenue, see § 27-15-3.

Local privilege tax, see § 27-17-9.

Refund of taxes, generally, see § 27-73-1 et seq.

JUDICIAL DECISIONS

1. In general.

Headlines or lead lines in the State-Wide Privilege Tax Act constitute a part of the statute and are not ordinary titles. Bailey v. Montgomery Ward & Co., 222 Miss. 544, 76 So. 2d 813 (1955).

Laws imposing privilege taxes are strictly construed as against claim of state or any of its political subdivisions. Craig v. Southern Bell Tel. & Tel. Co., 208 Miss. 881, 45 So. 2d 732 (1950).

Laws imposing privilege taxes are liberally construed in favor of person sought to be charged with such taxes. Craig v. Southern Bell Tel. & Tel. Co., 208 Miss. 881, 45 So. 2d 732 (1950).

When words of statute have reference to business, trade or profession, they should be given meaning as understood by that business or trade, though that particular meaning may differ from common or ordinary meaning of the words. Craig v. Southern Bell Tel. & Tel. Co., 208 Miss. 881, 45 So. 2d 732 (1950).

Where railroad, which was licensed to operate its own lines in state, on September 1, 1940, took over operation of the lines of another railroad, which had paid privilege tax for the tax period ending September 1, 1940, according to the classification thereof fixed by the tax commissioner, state could not again collect tax for former's operation of latter's lines during period in question on a classification of the same property for the privilege of operating a railroad over the same, since the privilege of using the lines in question throughout such period had already been paid for. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Where defendant railroad, licensed to operate its own lines in the state, on September 1, 1940, took over the operation of the lines of Mobile & Ohio R. R. which had paid the privilege tax on its lines according to the classification thereof fixed by the tax commissioner, for the tax period ending December 1, 1940, such classification given the Mobile & Ohio R. R., if personal to it and made after an opportunity was afforded for a hearing, could not be invoked as an assessment or classification against defendant, for its operation during such period, without further affirmative action by the tax commissioner. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 42-44.

58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 10, 54, 72, 78.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 1-5.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 11-15.

CJS. 53 C.J.S., Licenses § 51 et seq.

§ 27-15-13. Repealed.

Repealed by Laws, 1974, ch. 390, eff from and after June 1, 1974.

[Codes, 1942, § 9431; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 4; Laws, 1954, ch. 161, § 1]

Editor's Note — Former § 27-15-13 pertained to foreign banking corporations or trust companies acting as fiduciaries.

§ 27-15-15. Repealed.

Repealed by Laws, 1974, ch. 429, eff from and after June 1, 1974.

[Codes, 1942, § 9433; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 5]

Editor's Note — Former § 27-15-15 concerned taxation of outdoor advertising.

§ 27-15-17. Repealed.

Repealed by Laws, 1974, ch. 430, eff from and after June 1, 1974.

[Codes, 1942, § 9435; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 6]

Editor's Note — Former § 27-15-17 imposed a tax on advertising on street cars, buses or trucks.

§ 27-15-19. Repealed.

Repealed by Laws, 1974, ch. 464, eff from and after June 1, 1974.

[Codes, 1942, § 9450; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 7]

Editor's Note — Former § 27-15-19 imposed a tax on a business of distributing or selling at wholesale batteries for motor vehicles.

§ 27-15-21. Repealed.

Repealed by Laws, 1978, ch. 436, § 1, eff from and after July 1, 1978.

[Codes, 1942, § 9452; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 8]

Editor's Note — Former § 27-15-21 related to the imposition of tax for sale or distribution of bakery products.

§ 27-15-23. Repealed.

Repealed by Laws, 1978, ch. 410, § 7, eff from and after January 1, 1979.

[Codes, 1942, § 9465; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 9; Laws, 1956, ch. 415; Laws, 1958, chs. 561, 562, § 1]

Editor's Note — Former § 27-15-23 imposed a tax on savings and loan associations.

§ 27-15-25. Repealed.

Repealed by Laws, 1974, ch. 431, eff from and after June 1, 1974.

[Codes, 1942, § 9466; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 10; Laws, 1958, ch 562, § 2]

Editor's Note — Former § 27-15-25 imposed a tax on candy factories.

§ 27-15-27. Repealed.

Repealed by Laws, 1974, ch. 465, eff from and after June 1, 1974.

[Codes, 1942, § 9470; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 12]

Editor's Note — Former § 27-15-27 imposed a tax on persons operating devices for the purpose of checking bags, parcels, etc.

§ 27-15-29. Repealed.

Repealed by Laws, 1974, ch. 466, eff from and after June 1, 1974.

[Codes, 1942, § 9478; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 13; Laws, 1958, ch. 562, § 3]

Editor's Note — Former § 27-15-29 imposed a tax on persons engaged in the business of operating a plant for roasting, blending or mixing coffee, or a plant for grinding or mixing spices.

§ 27-15-31. Repealed.

Repealed by Laws, 1974, ch. 432, eff from and after June 1, 1974.

[Codes, 1942, § 9482; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 14]

Editor's Note — Former § 27-15-31 imposed a tax on persons operating a business of inquiring into reporting credit or financial standings.

§ 27-15-33. Repealed.

Repealed by Laws, 1982, ch. 442, § 2, eff from and after July 1, 1983.

[Codes, 1942, § 9484; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 15; Laws, 1950, ch. 533; Laws, 1956, ch. 429; Laws, 1958, ch. 562, § 4; Laws, 1962, ch. 590, § 1; Laws, 1971, ch. 352, § 1]

§ 27-15-35. Repealed.

Repealed by Laws, 1978, ch. 444, § 1, eff from and after June 1, 1978.

[Codes, 1942, § 9485; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 16; Laws, 1958, ch. 562, § 5]

Editor's Note — Former § 27-15-35 imposed a privilege tax on persons engaged in the business of constructing or repairing roads or highways who removed road machinery from the state.

§ 27-15-37. Repealed.

Repealed by Laws, 1974, ch. 467, eff from and after June 1, 1974.

[Codes, 1942, § 9485; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 16; Laws, 1958, ch. 562, § 5]

Editor's Note — Former § 27-15-37 imposed a tax on persons engaged in the business of buying and selling cotton.

§ 27-15-39. Repealed.

Repealed by Laws, 1974, ch. 468, eff from and after June 1, 1974.

[Codes, 1942, § 9520; Laws, 1938, ch. 120; Laws, 1940, ch. 112; Laws, 1946, ch. 440, §§ 1, 2]

Editor's Note — Former § 27-15-39 imposed a privilege tax on businesses engaged in the sale, etc. of gas systems, liquefied petroleum, etc.

§ 27-15-41. Repealed.

Repealed by Laws, 1974, ch. 433, eff from and after June 1, 1974.

[Codes, 1942, § 9552; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 25; Laws, 1958, ch. 562, § 6]

Editor's Note — Former § 27-15-41 imposed a tax on any person engaged in the business of renting or leasing towels, linens, etc.

§ 27-15-43. Repealed.

Repealed by Laws, 1974, ch. 469, eff from and after June 1, 1974.

[Codes, 1942, § 9578; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 26]

Editor's Note — Former § 27-15-43 imposed a tax on vendors selling products on trains.

§ 27-15-45. Repealed.

Repealed by Laws, 1978, ch. 436, § 1, eff from and after July 1, 1978.

[Codes, 1942, § 9615; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 39; Laws, 1954, ch. 365, § 1; Laws, 1958, ch. 562, § 7]

Editor's Note — Former § 27-15-45 imposed a tax on persons engaged in the business of placing racks, stands, etc. in stores upon which a stock of merchandise was displayed and maintained on consignment, etc.

§ 27-15-47. Repealed.

Repealed by Laws, 1978, ch. 474, § 3, eff from and after June 1, 1978.

[Codes, 1942, § 9615; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 39; Laws, 1954, ch. 365, § 1; Laws, 1958, ch. 562, § 7]

Editor's Note — Former § 27-15-47 imposed a tax on persons operating a roadhouse, night club, public dance hall, etc.

§ 27-15-49. Repealed.

Repealed by Laws, 1978, ch. 498, § 2, eff from and after June 1, 1978.

[Codes, 1942, § 9616; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 40; Laws, 1952, ch. 411, §§ 1, 2; Laws, 1954, ch. 368, §§ 1, 2; Laws, 1958, ch. 562, § 8]

Editor's Note — Former § 27-15-49 imposed a tax on persons engaged in the business of selling or leasing road machinery, materials, etc.

§ 27-15-51. Repealed.

Repealed by Laws, 1974, ch. 434, eff from and after June 1, 1974.

[Codes, 1942, § 9622; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 41]

Editor's Note — Former § 27-15-51 imposed a tax on a person engaged in the business of dealing in securities, stocks, etc.

§§ 27-15-53 and 27-15-55. Repealed.

Repealed by Laws, 1978, ch. 436, § 1, eff from and after July 1, 1978.

§ 27-15-53. [Codes, 1942, § 9623; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 42]

§ 27-15-55. [Codes, 1942, § 9632; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 44]

Editor's Note — Former § 27-15-53 imposed a tax on a person engaged in the sale, lease or exchange of sewing machines.

Former § 27-15-55 imposed a tax on manufacturers, producers, bottlers and distributors of soft drinks.

§ 27-15-57. Repealed.

Repealed by Laws, 1978, ch. 459, § 2, eff from and after passage June 1, 1978.

[Codes, 1942, § 9649(2); Laws, 1944, ch. 138, § 45; Laws, 1948, ch. 454, § 1; Laws, 1952, ch. 408, § 1; Laws, 1956, ch. 416, § 1; Laws, 1958, ch. 562; Laws, 1966, ch. 638, § 1]

Editor's Note — Former § 27-15-57 imposed a tax on transient vendors, dealers or peddlers.

§ 27-15-59. Repealed.

Repealed by Laws, 1978, ch. 474, § 3, eff from and after June 1, 1978.

[Codes, 1942, § 9650; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 138, § 46; Laws, 1964, ch. 515, § 1]

Editor's Note — Former § 27-15-59 imposed a tax on travel bureaus, tour agencies and agents or representatives thereof.

INSURANCE TAXES

SEC.

27-15-81. Tax imposed.
27-15-82. Effective date of privilege licenses issued under Title 83, Mississippi Code of 1972.
27-15-83. Privilege tax for foreign and domestic insurance companies; fee for amending privilege license.
27-15-85. Business entity acting as insurance producer, limited lines producer or limited lines credit insurance producer.
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27-15-91. Contents of license issued pursuant to §§ 27-15-85, 27-15-87 and 27-15-89.
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27-15-95. Repealed.
27-15-97. Insurance adjusters.
27-15-99. Repealed.
27-15-101. Collection of certain insurance taxes.
27-15-103. Premium taxes; foreign insurance companies and associations.
27-15-105. Premium taxes; domestic companies.
27-15-107. Premium taxes; four periodic estimated tax returns and payments; reconciliation return and final payment; reporting periods, amount of tax to be paid each reporting period, due dates; penalties; Department of Revenue to enforce.
27-15-109. Premium taxes; domestic companies.
27-15-111. Repealed.
27-15-113. Premium taxes; collection by state tax commission; administrative provisions of Sales Tax Law to apply.
27-15-115. Additional taxes imposed.
27-15-117. Premium taxes; applicability to mutual and reciprocal insurance companies and associations.
27-15-119. Premium taxes; annuity policies and contracts.
27-15-121. Premium retaliatory tax; citation.
27-15-123. Premium retaliatory tax; imposition.
27-15-125. Premium retaliatory tax; excluded taxes and charges.
27-15-127. Premium retaliatory tax; determination of domicile of foreign insurer.
27-15-129. Reduction in premium tax for qualifying Mississippi investments.
27-15-131. Credit for overpayment of taxes.
27-15-133. Credit against premium tax for domestic or foreign insurance company that writes policies within coast area of the state.

§ 27-15-81. Tax imposed.

Every person, firm or corporation (other than burial associations, hospital service associations, nonprofit hospital, medical and surgical service corporations, nonprofit community service blood supply plans and nonprofit medical liability insurance corporations taxed as otherwise provided by law), which contracts on his, their or its accounts, to issue any policies for, or agreements for life, fire, marine, surety, guaranty, fidelity, employees' liability, liability, credit, health, accident, livestock, plate glass, tornado, automobile, automatic sprinkler, burglary, steam boiler and all other forms of insurance, shall, before any such company shall be permitted to engage or continue in such business, or exercise powers and rights under the laws of the State of Mississippi, pay to the commissioner of insurance as provided in this chapter, the following license and privilege taxes, which shall be in lieu of all licenses and privilege taxes, state, county or municipal, as follows:

SOURCES: Codes, 1942, § 9535; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 17; Laws, 1978, ch. 441, § 1, eff from and after July 1, 1978.

Editor's Note — This section, as amended by Laws of 1978, ch. 441 § 1, ends in a colon, apparently referencing the sections that follow this section.

Cross References — Collection of tax, see § 27-15-101.

Tax on issuers or fire insurance for expenses of state fire marshal and expenses of state fire academy, see § 45-11-5.

Privilege tax on burial associations, see § 83-37-21.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 344, 348.

CJS. 44 C.J.S., Insurance §§ 131, 132.

84 C.J.S., Taxation § 200 et seq.

§ 27-15-82. Effective date of privilege licenses issued under Title 83, Mississippi Code of 1972.

Any privilege license issued under Title 83, Mississippi Code of 1972, shall be effective on the date the license is issued.

SOURCES: Laws, 2010, ch. 450, § 2, eff from and after July 1, 2010.

§ 27-15-83. Privilege tax for foreign and domestic insurance companies; fee for amending privilege license.

(1) Upon each foreign insurance company licensed as a single line company defined under Section 83-19-1, the privilege tax is as follows:

(a) Fire and Allied Lines and/or Industrial Fire	$200.00
(b) Casualty/Liability	$200.00
(c) Fidelity and/or Surety	$200.00

(d) Workers' Compensation	$200.00
(e) Boiler and Machinery	$200.00
(f) Plate Glass	$200.00
(g) Aircraft	$200.00
(h) Inland Marine and/or Ocean Marine	$200.00
(i) Automobile Physical Damage/Automobile Liability	$200.00
(j) Homeowners/Farmowners	$200.00
(k) Guaranty/Mortgage Guaranty	$200.00
(*l*) Trip Accident and Baggage	$200.00
(m) Legal	$200.00
(n) Life and/or Accident and Health; Credit Life, Accident and Health; Industrial Life, Accident and Health; and Variable Contracts	$200.00
(o) Title	$200.00
(p) Fraternal	$ 50.00

(2) For any combination of classifications of a foreign insurance company, the privilege tax for a multiple line company shall be Three Hundred Fifty Dollars ($350.00).

(3) Any stock, mutual, reciprocal or reinsurance company shall pay the appropriate privilege tax for each line of insurance the company is licensed to underwrite.

(4) For each domestic insurance which has its home office located in Mississippi, the privilege tax shall be one-half (½) of the fees listed in this section.

(5) Each insurance company or association which amends its privilege license shall pay a fee of Twenty-five Dollars ($25.00).

SOURCES: Codes, 1942, § 9536; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 18; Laws, 1985, ch. 433, § 1; Laws, 1988, ch. 526, § 10; Laws, 1994, ch. 509, § 1; Laws, 1998, ch. 323, § 8, eff from and after July 1, 1998.

Editor's Note — Laws of 1988, ch 526, § 13, provides as follows:

"SECTION 13. The commissioner may, after notice and hearing, issue rules and regulations that he deems necessary to effectuate the purposes of this act or to eliminate devices or plans designed to avoid or render ineffective the provisions of this act. The commissioner may require such information as is reasonably necessary for the enforcement of this act. All rules and regulations adopted and promulgated pursuant to this act shall be subject to the provisions of the Mississippi Administrative Procedures Law as provided in Section 25-43-1 et seq. [now Section 25-43-1.101 et seq.], Mississippi Code of 1972."

Cross References — Collection of tax, see § 27-15-101.

Capital and surplus requirements for various classes of insurance companies, see § 83-19-31.

§ 27-15-85. Business entity acting as insurance producer, limited lines producer or limited lines credit insurance producer.

(1) Upon each business entity, as defined in Section 83-17-53, acting as an insurance producer, limited lines producer or limited lines credit insurance producer ....$ 200.00.

Every individual acting as an insurance producer, limited lines producer, limited lines credit insurance producer, supervising general agent or managing general agent for a business entity shall meet all requirements set forth in Title 83 and no individual shall be exempt from the privilege tax placed on him by this chapter.

(2) Upon each business entity, as defined in Section 83-17-53, acting as an insurance producer, limited lines producer or limited lines credit insurance producer that amends its privilege license by adding or deleting a line of authority or for the issuance of a duplicate license ....$ 50.00.

SOURCES: Codes, 1942, § 9538; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 20; Laws, 1948, ch. 353, § 1; Laws, 1962, ch. 476, § 1; Laws, 1977, ch. 334, § 2; Laws, 1990, ch. 557, § 1; Laws, 1991, ch. 430 § 1; Laws, 2001, ch. 510, § 27; Laws, 2009, ch. 448, § 1, eff from and after Nov. 1, 2009.

Cross References — Collection of tax, see § 27-15-101.
Tax exemption in certain cases, see §§ 27-15-227, 27-17-479.
Issuance of certificate of authority, see § 83-17-25.

JUDICIAL DECISIONS

1. In general.

A corporation may be licensed as an insurance agency under the laws of this state. Johnson & Higgins, Inc. v. Commissioner of Ins., 321 So. 2d 281 (Miss. 1975).

§ 27-15-87. Individual acting as insurance producer, limited lines producer or limited lines credit insurance producer.

(1) Upon each individual acting as an insurance producer, limited lines producer, limited lines credit insurance producer ....$ 100.00.

(2) Upon each individual acting as an insurance producer, limited lines producer or limited lines credit insurance producer that amends its privilege license by adding or removing a line of authority or for the issuance of a duplicate license ....$ 25.00.

SOURCES: Codes, 1942, § 9539; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 21; Laws, 1948, ch. 353, § 2; Laws, 1962, ch. 477, § 1; Laws, 1985, ch. 433, § 2; Laws, 2001, ch. 510, § 28; Laws, 2009, ch. 448, § 2, eff from and after Nov. 1, 2009.

Cross References — Collection of tax, see § 27-15-101.
Tax exemption in certain cases, see §§ 27-15-227, 27-17-479.
Issuance of certificate of authority, see § 83-17-25.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

§ 27-15-89. Supervising general agents and managing general agents.

(1) Upon each supervising general agent as defined in Section 83-17-1 .... $ 100.00.

(2) Upon each managing general agent as defined in Section 83-18-103 .... $ 100.00.

The privilege licenses issued under this section to "supervising general agents" shall not constitute authority to solicit business within the State of Mississippi, and shall be renewed annually at the time and in the manner prescribed by Section 83-17-25 on application forms which shall be furnished by the Commissioner of Insurance and shall show the name of the insurance company or companies such "supervising general agent" represents, and other additional information as may be required by the Commissioner of Insurance.

SOURCES: Codes, 1942, § 9539; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 21; Laws, 1948, ch. 353, § 2, 1962, ch. 477, § 1; Laws, 1977, ch. 334, § 3; Laws, 1985, ch. 433, § 3; Laws, 2001, ch. 510, § 29; Laws, 2009, ch. 448, § 3, eff from and after Nov. 1, 2009.

Cross References — Collection of tax, see § 27-15-101.
Tax exemption in certain cases, see §§ 27-15-227, 27-17-479.
Issuance of certificate of authority, see § 83-17-25.

RESEARCH REFERENCES

ALR. Public regulation or control of insurance agents or brokers. 10 A.L.R.2d 950.

§ 27-15-91. Contents of license issued pursuant to §§ 27-15-85, 27-15-87 and 27-15-89.

When any person, firm, corporation or solicitor pays a tax required under Sections 27-15-85, 27-15-87 and 27-15-89, the license so issued shall state the type, types or kinds of insurance such licensee is permitted and qualified to engage in. Whenever there is no specific privilege license tax levied against insurance agents not otherwise classified in this statute, same shall be issued under Sections 27-15-85, 27-15-87, 27-15-89, and this section, and shall state the type, types or kinds of insurance the licensee is licensed and qualified to engage in.

SOURCES: Codes, 1942, § 9539; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 21; Laws, 1948, ch. 353, § 2, 1962, ch. 477, § 1; Laws, 2009, ch. 448, § 4, eff from and after Nov. 1, 2009.

Cross References — Collection of tax, see § 27-15-101.

§ 27-15-93.

Repealed by Laws, 2009, ch. 448, § 14, effective November 1, 2009.

§ 27-15-93. [Codes, 1942, § 9540; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 22; Laws, 1978, ch. 462, § 3; Laws, 1985, ch. 433, § 4; Laws, 1990, ch. 557, § 2; Laws, 1991, ch. 430 § 2; Laws, 2001, ch. 510, § 30, eff from and after Jan. 1, 2002.]

Editor's Note — Former § 27-15-93 provided a tax on incorporated life, health or accident insurance agencies, incorporated supervising general agents and life insurance agents.

§ 27-15-95.

Repealed by Laws, 2009, ch. 448, § 15, effective November 1, 2009.

§ 27-15-95. [Codes, 1942, § 9541; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 23; Laws, 1978, ch. 462, § 4; Laws, 1985, ch. 433, § 5, eff from and after July 1, 1985.]

Editor's Note — Former § 27-15-95 provided a tax on each person other than an incorporated insurance agency writing health and accident, or industrial life insurance.

§ 27-15-97. Insurance adjusters.

Upon each incorporated company, firm or association engaged in the business of adjusting any insured losses. ....$400.00.

Upon each person engaged in the business of adjusting any insured losses ....$100.00.

This section shall not apply to officers or salaried employees of insurers nor to special or other agents of licensed insurers who adjust for the insurers they represent.

SOURCES: Codes, 1942, § 9542; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 24; Laws, 1950, ch. 413; Laws, 2016, ch. 468, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment substituted “$ 400.00” for “$ 200.00” and “$ 100.00” for “$ 50.00.”

Cross References — Collection of tax, see § 27-15-101.

Issuance of certificate of authority, see § 83-17-25.

§ 27-15-99.

Repealed by Laws, 2009, ch. 448, § 16, effective November 1, 2009.

§ 27-15-99. [Codes, 1942, § 9543; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 24A; Laws, 1985, ch. 433, § 6, eff from and after July 1, 1985.]

Editor's Note — Former § 27-15-99 provided a tax on each person writing exclusively land title insurance.

§ 27-15-101. Collection of certain insurance taxes.

All taxes, fees or licenses charged and imposed by Sections 27-15-81 through 27-15-97 shall be collected by the Commissioner of Insurance as provided in this chapter, and if not paid as provided by law, penalty shall be imposed as in other cases of failure to pay privilege licenses; no license required by such sections shall be prorated. The form of license and the form of application to be made therefor shall be prescribed by the Commissioner of Insurance.

SOURCES: Codes, 1942, § 9544; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 24B; Laws, 1985, ch. 433, § 7; Laws, 2009, ch. 448, § 18, eff from and after Nov. 1, 2009.

§ 27-15-103. Premium taxes; foreign insurance companies and associations.

(1) Except as otherwise provided in Section 83-61-11, in addition to the license tax now or hereafter provided by law, which tax shall be paid when the company enters or is admitted to do business in this state, there is hereby levied and imposed upon all foreign insurance companies and associations, including life insurance companies and associations, health, accident and industrial insurance companies and associations, fire and casualty insurance companies and associations, and all other foreign insurance companies and associations of every kind and description, an additional annual license or privilege tax of three percent (3%) of the gross amount of premium receipts received from, and on insurance policies and contracts written in, or covering risks located in this state, except for premiums received on policies issued to fund a deferred compensation plan qualified under Section 457 of the Federal Tax Code for federal tax exemption. In determining said amount of premiums, there shall be deducted therefrom premiums received for reinsurance from companies authorized to do business in this state, cash dividends paid under policy contracts in this state, and premiums returned to policyholders and cancellations on accounts of policies not taken, and, in the case of mutual insurance companies (including interinsurance and reciprocal exchanges, but not including mutual life, accident, health or industrial insurance companies) any refund made or credited to the policyholder other than for losses. The term "premium" as used herein shall also include policy fees, membership fees, and all other fees collected by the companies. No credit or deduction from gross premium receipts shall be allowed for any commission, fee or compensation paid to any agent, solicitor or representative. Provided, however, that any foreign insurance carrier selected to furnish service to the State of Mississippi under the State Employees Life and Health Insurance Plan shall not be required to pay the annual license or privilege tax on the premiums collected for coverage under the said plan.

(2) In the event that the Mississippi Supreme Court or another court finally adjudicates that any tax levied prior to July 1, 1985, under the provisions of this section was collected unconstitutionally and that a liability for a credit or refund for such collection has accrued, then the rate of tax set forth above shall be increased to four percent (4%) for a period of six (6) years beginning July 1 following such adjudication.

(3) The taxes herein levied and imposed for the calendar year 1982 and all calendar years thereafter shall be reduced by the net amount of income tax paid to this state for the preceding calendar year, provided, in no event may the credit be taken more than once. The credit herein authorized shall, in no event, be greater than the premium tax due under this section; it being the purpose and intent of this paragraph that whichever of the annual insurance premium tax or the income tax is greater in amount shall be paid.

SOURCES: Codes, 1942, § 9537-01; Laws, 1956, ch. 337, § 1; Laws, 1971, ch. 523, § 11; Laws, 1973, ch. 482, § 1; Laws, 1977, ch. 500, § 2; Laws, 1982, ch. 351, § 1; Laws, 1984, ch. 462, § 10; Laws, 1985, ch. 530, § 1; Laws, 1987, ch. 327, § 4; Laws, 1992, ch. 578, § 11; reenacted without change, Laws, 1994, ch. 620, § 11, eff from and after July 1, 1994.

Editor's Note — Laws of 1992, ch. 578, § 13, provided for the repeal of this section effective from and after July 1, 1994. Subsequently, Laws of 1994, ch. 620, § 13, repealed Laws of 1992, ch. 578, § 13.

Cross References — Filing statement of premium receipts and payment of premium taxes as computed under this section, see § 27-15-107.

Premium tax on domestic companies, see § 27-15-109.

Deduction of retaliatory taxes imposed by other states, see § 27-15-109.

Premium taxes on annuity policies and contracts, see § 27-15-119.

Premium retaliatory tax, see § 27-15-121 et seq.

Reduction in premium tax for insurers who make qualifying Mississippi investments, see § 27-15-129.

Credit for overpayment of taxes, see § 27-15-131.

Taxpayer claiming credit under § 57-105-1 against the taxes imposed by this section not required to pay any additional tax under § 27-15-123 as a result of claiming the credit, see § 57-105-1.

Payment from taxes under this section of reward and related expenses in cases of willful destruction by fire or explosion of property within this state, see § 83-1-35.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

Tax on premium receipts of mutual insurance companies, see § 83-31-45.

Contracts of insurance under the Voluntary Basic Health Insurance Coverage Law exempt from premium tax, see § 83-61-11.

Federal Aspects — Section 457 of the Federal Tax Code, referred to in this section, is codified as 26 USCS § 457.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 346, 347.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 412.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 413.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 422.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

CJS. 44 C.J.S., Insurance §§ 118-120.

84 C.J.S., Taxation §§ 205, 206, 254, 255.

§ 27-15-105. Premium taxes; domestic companies.

Every insurance company which, having been admitted to do business in this state, has withdrawn or shall hereafter withdraw from the state, shall continue to be liable for the tax hereby imposed and shall be required to make and file the annual statement thereof as is herein required and pay the required tax so long as it shall continue to collect premiums from its policyholders in the state.

SOURCES: Codes, 1942, § 9537-02; Laws, 1956, ch. 337, § 2, eff from and after July 1, 1956.

Cross References — Deduction of retaliatory taxes imposed by other states, see § 27-15-109.

§ 27-15-107. Premium taxes; four periodic estimated tax returns and payments; reconciliation return and final payment; reporting periods, amount of tax to be paid each reporting period, due dates; penalties; Department of Revenue to enforce.

(1) Every insurance company liable for the tax under the provisions hereof shall make and file with the Department of Revenue, estimated tax returns and payments for the insurance premium tax levied under Sections 27-15-103 and 27-15-109 for the first four (4) periods of each calendar year and a reconciliation return and payment for the final reporting period for each calendar year based on the actual liability of the insurance company for insurance premium taxes for that calendar year. The insurance company shall estimate the amount of insurance premium taxes to be due for each calendar year and pay insurance premium taxes based on a percentage of that estimate as provided for in subsection (2) of this section for the first four (4) reporting periods of each calendar year. In addition to reflecting the amount of estimated tax payment being paid, the estimated return shall also contain an estimate of the gross amount of premium receipts of the insurance company subject to the insurance premium tax under Sections 27-15-103 and 27-15-109 during the reporting period. For the final reporting period for each calendar year, every insurance company shall file a reconciliation tax return reporting the balance of insurance premium taxes due for the calendar year based on insurance

premiums actually received during the calendar year after the application of the estimated tax payments for the first four (4) reporting periods and any applicable credits, and pay the balance of insurance premium taxes due for the calendar year. The insurance company shall also pay with the reconciliation tax return any penalties and/or interest due for the calendar year, including any penalty and/or interest for underestimating the amount of estimated tax to be paid for the first four (4) reporting periods.

(2) The reporting periods, the amount of insurance premium tax to be paid for the reporting periods, and the due date for the tax return and payment for the reporting periods are as follows:

(a) For the first reporting period of January 1 through March 31, the percentage to be paid is one-fourth (1/4) of the estimated tax amount. The due date for the estimated return and payment is April 20.

(b) For the second reporting period of April 1 through May 31, the percentage to be paid is one-sixth (1/6) of the estimated tax amount. The due date for the estimated return and payment is June 20.

(c) For the third reporting period of June 1 through June 30, the percentage to be paid is one-twelfth (1/12) of the estimated tax amount. The due date for the estimated return and payment is July 20.

(d) For the fourth reporting period of July 1 through September 30, the percentage to be paid is one-fourth (1/4) of the estimated tax amount. The due date for the estimated return and payment is October 20.

(e) For the final reporting period of October 1 through December 31, the balance of insurance premium tax due for the calendar year shall be paid after application of estimated payments for the first four (4) reporting periods and any applicable credits are reported on a reconciliation tax return. The due date for the return and payment, including payment of any penalty and/or interest, is March 1.

(3) Any insurance company liable for the insurance premium tax levied under Sections 27-15-103 and 27-15-109 that fails to file an estimated tax return or a reconciliation tax return and fails to pay the required estimated tax payments with the estimated tax return or the balance of insurance premium tax with the reconciliation tax return by the due date for such return and payment, shall be liable for a penalty in the amount of ten percent (10%) of the payment due and interest at the rate of one percent (1%) per month from the due date of the payment until paid.

(4) Any insurance company that underestimates the estimated amount of insurance premium tax to be paid for any of the first four (4) reporting periods by more than ten percent (10%) shall be liable for penalty in the amount of ten percent (10%) of the amount by which the insurance company underestimated the amount of insurance premium tax due. The amount of this underestimate shall be determined by subtracting the amount paid for that reporting period from an amount determined by multiplying the actual annual insurance premium taxes due for the calendar year times the percentage of estimated tax to be paid for the reporting period. The insurance company shall also be liable for interest on the underestimated amount at the rate of one percent (1%) per

month from the due date for the reporting period until the insurance company pays the actual annual insurance premium taxes due for the calendar year in which the reporting period is included.

(5) The Department of Revenue shall have the authority to promulgate rules and regulations, not inconsistent with this article, as it may deem necessary to enforce its provisions.

SOURCES: Codes, 1942, § 9537-03; Laws, 1956, ch. 337, § 3; Laws, 1982, ch. 351, § 2; Laws, 1988, ch. 330; Laws, 1994, ch. 502, § 1; Laws, 2002, ch. 539, § 4; Laws, 2008, ch. 330, § 1; Laws, 2009, ch. 352, § 1; Laws, 2014, ch. 419, § 1, eff from and after Jan. 1, 2014.

Cross References — Transfer of powers, duties and functions of State Tax Commission to Commissioner of Revenue acting through the Department of Revenue, see § 27-3-4.

Sworn statement of retaliatory taxes imposed on domestic insurers by other states, see § 27-15-109.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

Tax on premium receipts of mutual insurance companies, see § 83-31-45.

§ 27-15-109. Premium taxes; domestic companies.

(1) Except as otherwise provided in Section 83-61-11, there is hereby levied and imposed upon each domestic company doing business in this state an annual tax of three percent (3%) of the gross amount of premiums collected by such domestic company on insurance policies and contracts written in, or covering risks located in this state, except for premiums received on policies issued to fund a retirement, thrift or deferred compensation plan qualified under Section 401, Section 403 or Section 457 of the Federal Tax Code for federal tax exemption. Provided, however, that a domestic insurance company against which is levied additional premium tax under retaliatory laws of other states in which it does business, as a result of the tax increase provided by Sections 27-15-103 through 27-15-117, may deduct the total of such additional retaliatory tax from the state income tax due by it to the State of Mississippi. The insurance carriers selected to furnish service to the State of Mississippi, under the State Employees Life and Health Insurance Plan, shall not be required to pay the premium tax levied against insurance companies under this section on the premiums collected for coverage under the state employees plan.

(2) Except as expressly provided by subsection (1) of this section, all of the provisions of Sections 27-15-103 through 27-15-117 shall be applicable to such domestic insurance companies. However, the statement filed with the State Tax Commission by domestic insurance companies as provided in Section 27-15-107 shall include therein a sworn statement of all additional retaliatory premium taxes paid by them to other states as a result of the increase in

premium taxes imposed by Sections 27-15-103 through 27-15-117, itemized by states to which paid.

(3) In the event that the Mississippi Supreme Court or another court finally adjudicates that any tax levied prior to July 1, 1985, under the provisions of this section was collected unconstitutionally and that a liability for a credit or refund for such collection has accrued, then the rate of tax set forth above shall be increased to four percent (4%) for a period of six (6) years beginning July 1 following such adjudication.

SOURCES: Codes, 1942, §§ 9537-04, 9537-05; Laws, 1956, ch. 337, §§ 4, 5; Laws, 1971, ch. 523, § 12; Laws, 1973, ch. 482, § 3; Laws, 1978, ch. 441, § 2; Laws, 1982, ch. 351, § 3; Laws, 1985, ch. 530, § 2; Laws, 1987, ch. 327, § 5; Laws, 1992, ch. 578, § 12; reenacted without change, Laws, 1994, ch. 620, § 12, eff from and after July 1, 1994.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

Premium taxes on annuity policies and contracts, see § 27-15-119.

Premium retaliatory tax, see § 27-15-121 et seq.

Reduction in premium tax for insurers who make qualifying Mississippi investments, see § 27-15-129.

Credit for overpayment of taxes, see § 27-15-131.

Taxpayer claiming credit under § 57-105-1 against the taxes imposed by this section not required to pay any additional tax under § 27-15-123 as a result of claiming the credit, see § 57-105-1.

Payment from taxes under this section of reward and related expenses in cases of willful destruction by fire or explosion of property within this state, see § 83-1-35.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

Tax on premium receipts of mutual insurance companies, see § 83-31-45.

Contracts of insurance under the Voluntary Basic Health Insurance Coverage Law exempt from premium tax, see § 83-61-11.

Federal Aspects — Qualified pension plans and taxation of employee annuities, see §§ 26 USCS §§ 401, 403.

JUDICIAL DECISIONS

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Validity.
7. Construction and application.

I. Under Current Law.

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Validity.

Statute exempting domestic insurance corporations from ad valorem taxes held not to deny equal protection of laws based on arbitrary and unreasonable classification, or as violation of privileges and immunities clause in federal constitution, or as special law or suspension of general laws for benefit of corporations, or as surrender of power to tax corporations, or as authorizing general law whereby municipalities may exempt public utility enterprises from taxation, or as special law exempting property from taxation, or as violating constitutional provision requiring property of private corporations to be taxed same as individuals. Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

Statute exempting domestic insurance corporations from ad valorem taxes held not unconstitutional as amending law by reference to title only. Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

State tax collector held entitled to challenge validity of statutes exempting domestic insurance corporations from ad valorem taxes. Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

7. Construction and application.

Two-story building adjoining domestic insurance company's eleven-story home office building held subject to taxation where two-story building was not necessary to furnish light and air to home office building and had no connection with life insurance business but was used for rental purposes only. Lamar Life Ins. Co. v. Board of Supvrs., 171 Miss. 141, 157 So. 239 (1934).

Land rightfully owned by domestic insurance companies is exempt from taxation, and land not rightfully owned is not exempt from taxation. Lamar Life Ins. Co. v. Board of Supvrs., 171 Miss. 141, 157 So. 239 (1934).

Interest-bearing securities and solvent credits acquired by domestic insurance corporation in making loans held exempt from ad valorem taxes. Miller v. Lamar Life Ins. Co., 158 Miss. 753, 131 So. 282 (1930).

§ 27-15-111. Repealed.

Repealed by Laws, 1990, ch 477, § 2, eff from and after passage (approved March 24, 1990).

[Codes, 1942, § 9537-06; Laws, 1956, ch. 337, § 6; 1982, ch 351, § 4]

Editor's Note — Former § 27-15-111 provided that an insurance company failing to pay tax imposed by certain sections would be liable for the tax, interest and penalties.

§ 27-15-113. Premium taxes; collection by state tax commission; administrative provisions of Sales Tax Law to apply.

All taxes for which any company is liable under the provisions of this chapter or any other title or chapter which imposes a tax on insurance premiums shall be collected and recovered by the State Tax Commission in the same manner provided by law for the collection of sales taxes; and all administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this chapter or any other title or chapter which imposes a tax on insurance premiums and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this chapter or any other title or chapter which imposes a tax on insurance premiums as are provided in said sales tax law, except that in cases of conflict, then the provisions of this chapter or any other title or chapter which imposes a tax on insurance premiums shall control.

SOURCES: Codes, 1942, § 9537-06; Laws, 1956, ch. 337, § 6; Laws, 1982, ch. 351, § 5; Laws, 1990, ch. 477, § 1, eff from and after passage (approved March 24, 1990).

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

Deduction of retaliatory taxes imposed by other states, see § 27-15-109.

Credit for overpayment of taxes, see § 27-15-131.

Administrative provisions, see § 27-15-201 et seq.

Mississippi Sales Tax Law, see § 27-65-1 et seq.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

§ 27-15-115. Additional taxes imposed.

In addition to all other taxes authorized by law, insurance companies shall pay the license and privilege taxes imposed by Sections 27-15-81 and 27-15-83, the taxes imposed by Sections 27-15-103 through 27-15-117, ad valorem taxes on real estate and tangible personal property, state income tax, sales tax levied on a vendor with a requirement of adding it to the sales price and use tax levied on the cost of tangible personal property purchased outside this state for use within this state.

SOURCES: Codes, 1942, § 9537-07; Laws, 1956, ch. 337, § 7; Laws, 1958, ch. 446; Laws, 1960, ch. 371; Laws, 1962, ch. 475; Laws, 1978, ch. 441, § 4, eff from and after July 1, 1978.

Cross References — State income taxes, see § 27-7-1 et seq.

Deduction of retaliatory taxes imposed by other states, see § 27-15-109.

Ad valorem taxes, see § 27-35-1 et seq.

Sales tax, see § 27-65-1 et seq.

Use or compensating taxes, see § 27-67-1 et seq.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

§ 27-15-117. Premium taxes; applicability to mutual and reciprocal insurance companies and associations.

All of the provisions of Sections 27-15-103 through 27-15-117 shall be applicable to mutual and reciprocal insurance companies and associations.

SOURCES: Codes, 1942, § 9537-08; Laws, 1956, ch. 337, § 8, eff from and after July 1, 1956.

Cross References — Deduction of retaliatory taxes imposed by other states, see § 27-15-109.

Tax on premium receipts of mutual insurance companies, see § 83-31-45.

§ 27-15-119. Premium taxes; annuity policies and contracts.

(1) Notwithstanding any other provisions of the laws of this state, the rate of the annual license or privilege tax on the gross amount of premium receipts received from and on annuity policies and contracts written in or covering risks located in this state shall be one percent (1%) upon all insurance companies and associations from July 1, 1994, through June 30, 1995, and thereafter there shall be no annual license or privilege tax on the gross amount of premium receipts received from and on annuity policies and contracts written in or covering risks located in this state upon all insurance companies and associations. Provided, however, an annual license or privilege tax on the gross amount of premium receipts received from and on policies and contracts issued to fund a retirement, thrift or deferred compensation plan qualified under Section 401, Section 403, an individual retirement annuity qualified under Section 408 or Section 457 of the Federal Tax Code for federal tax exemption shall not be imposed on any foreign or domestic company, unless such foreign company has its principal place of business in a state which imposes a license or privilege tax on such policies issued by companies having their principal place of business in Mississippi, in which case said foreign company shall be taxed at the same rate its state of principal business imposes a license or privilege tax on Mississippi companies with respect to such policies. Provided further, in the event an insurance company has heretofore included in its premium charge the tax required hereby, said premium charges on all such annuity policies and contracts shall be reduced by the amount of said tax within one hundred twenty (120) days from March 30, 1974. This latter provision shall apply to all such annuity policies and contracts qualified under Section 401, Section 403, Section 408 or Section 457 of the Federal Tax Code for federal tax exemption presently in force as well as to those hereafter issued.

(2) In the event that the Mississippi Supreme Court or another court finally adjudicates that any tax levied prior to July 1, 1985, under the provisions of this section was collected unconstitutionally and that a liability for a credit or refund for such collection has accrued, then the rate of tax set forth above shall be increased to four percent (4%) for a period of six (6) years beginning July 1 following such adjudication.

SOURCES: Codes, 1942, § 9537.5; Laws, 1956, ch. 339; Laws, 1973, ch. 482, § 2; Laws, 1974, ch. 474; Laws, 1982, ch. 398; Laws, 1984, ch. 462, § 11; Laws, 1985, ch. 530, § 3; Laws, 1987, ch. 327, § 6; Laws, 1994, ch. 441, § 1, eff from and after July 1, 1994.

Cross References — Reduction in premium tax for insurers who make qualifying Mississippi investments, see § 27-15-129.

Credit for overpayment of taxes, see § 27-15-131.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

Federal Aspects — Qualified pension plan, or individual retirement annuity, see 26 USCS §§ 401, 403, 408.

§ 27-15-121. Premium retaliatory tax; citation.

Sections 27-15-121 through 27-15-127 shall be known as the "Mississippi Insurance Premium Tax Retaliatory Law."

SOURCES: Codes, 1942, § 9537-21; Laws, 1964, ch. 474, § 1, eff from and after December 31, 1964.

Cross References — Foreign insurance companies, generally, see § 83-21-1 et seq.

§ 27-15-123. Premium retaliatory tax; imposition.

When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Mississippi insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions or restrictions of whatever kind shall be imposed by the state tax commission or the commissioner of insurance upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Mississippi. Any tax, license or other fee or other obligation imposed by any city, county or other political subdivision or agency of such other state or country on Mississippi insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.

SOURCES: Codes, 1942, § 9537-22; Laws, 1964, ch. 474, § 2; Laws, 1982, ch. 351, § 6, eff from and after July 1, 1982.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

Taxpayer claiming credit under § 57-105-1 against the taxes imposed by this section not required to pay any additional tax under this section as a result of claiming the credit, see § 57-105-1.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

§ 27-15-125. Premium retaliatory tax; excluded taxes and charges.

Sections 27-15-121 through 27-15-127 shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance, other than property insurance, except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the state tax commission in determining the propriety and extent of retaliatory action under this section.

SOURCES: Codes, 1942, § 9537-23; Laws, 1964, ch. 474, § 3; Laws, 1982, ch. 351, § 7, eff from and after July 1, 1982.

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

Allocation of receipts from insurance premium taxes to municipal fire protection fund, see § 83-1-37.

Allocation of receipts from insurance premium taxes to county volunteer fire department fund, see § 83-1-39.

Application of insurance premium taxes to premium receipts of mutual insurance companies, see § 83-31-45.

§ 27-15-127. Premium retaliatory tax; determination of domicile of foreign insurer.

For the purposes of Sections 27-15-121 through 27-15-127 the domicile of a foreign insurer other than insurers formed under the laws of Canada, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this state or within six months after June 11, 1964, whichever date is the later, and may be any one of the following states:

(a) That in which the insurer was first authorized to transact insurance;

(b) That in which is located the insurer's principal place of business in the United States; or

(c) That in which is held the larger deposit of trusteed assets of the insurer for the protection of its policyholders and creditors in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

In the case of an insurer formed under the laws of Canada or a province thereof, its domicile shall be deemed to be that province in which its head office is situated.

SOURCES: Codes, 1942, § 9537-24; Laws, 1964, ch. 474, § 4, eff from and after December 31, 1964.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the first paragraph was corrected by substituting "June 11, 1964" for "the effective date of Sections 27-15-121 through 27-15-127."

§ 27-15-129. Reduction in premium tax for qualifying Mississippi investments.

(1) The amount of premium tax payable pursuant to Sections 27-15-103, 27-15-109, 27-15-119 and 83-31-45, Mississippi Code of 1972, shall be reduced from the amount otherwise fixed in such sections if the payer files a sworn statement with the required annual report showing as of the beginning of the reporting period that at least the following amounts of the total admitted assets of the payer were invested and maintained in qualifying Mississippi investments as hereinafter defined in subsection (2) of this section over the period covered by such report:

Percentage of Total Admitted Assets in Qualifying Mississippi Investments	Percentage of Premium Tax Payable
1%	99%
2%	98%
3%	97%
4%	96%
5%	95%
6%	94%
7%	93%
8%	92%
9%	91%
10%	80%
15%	70%
20%	60%
25%	50%

(2) For the purpose of this section, "a qualifying Mississippi investment" is hereby defined as follows:

(a) Certificates of deposit issued by any bank or savings and loan association domiciled in this state;

(b) Bonds of this state or bonds of municipal, school, road or levee districts, or other political subdivisions of this state;

(c) Loans evidenced by notes and secured by deeds of trust on property located in this state;

(d) Real property located in this state;

(e) Policy loans to residents of Mississippi, or other loans to residents of this state, or to corporations domiciled in this state;

(f) Common or preferred stock, bonds and other evidences of indebtedness of corporations domiciled in this state; and

(g) Cash on deposit in any bank or savings and loan association domiciled in this state.

"A qualifying Mississippi investment" shall not include any investment for which a credit is allocated under Section 57-105-1 and/or Section 57-115-1 et seq.

(3) If the credits, or any part thereof, authorized by the preceding provisions of this section shall be held by a court of final jurisdiction to be unconstitutional and void for any reason or to make the annual premium taxes levied by Sections 27-15-103, 27-15-109, 27-15-119 and 83-31-45, Mississippi Code of 1972, unlawfully discriminatory or otherwise invalid under the Fourteenth Amendment or the Commerce Clause of the Constitution of the United States or under any state or other federal constitutional provisions, it is hereby expressly declared that such fact shall in no way affect the validity of the annual premium taxes levied thereby, and that such provisions would have been enacted even though the Legislature had known this credit section would be held invalid.

(4) This section shall apply to taxes accruing and investments existing from and after July 1, 1985.

SOURCES: Laws, 1985, ch. 530, § 5; Laws, 1986, ch. 321; Laws, 1989, ch. 576, § 1; Laws, 1990, ch. 333, § 1; Laws, 1991, ch. 381, § 1; Laws, 1992, ch. 375, § 1; Laws, 2007, ch. 528, § 2; Laws, 2011, ch. 524, § 7, eff from and after July 1, 2011.

§ 27-15-131. Credit for overpayment of taxes.

In the event a company has overpaid taxes levied pursuant to Section 27-15-103, 27-15-109, 27-15-119 or 83-31-45, the commissioner may give credit for such overpayment and allow the company to take credit on subsequent returns or, if necessary, in the discretion of the commissioner, refund such overpayment as otherwise provided by Section 27-15-113.

SOURCES: Laws, 1985, ch. 530, § 6, eff from and after July 1, 1985.

Cross References — Premium taxes on foreign insurance companies, see § 27-15-103.

Premium taxes on domestic insurance companies, see § 27-15-109.

Premium taxes on annuity contracts and policies, see § 27-15-119.

Premium retaliatory tax, see § 27-15-123.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 344 et seq.

CJS. 84 C.J.S. Taxation §§ 205, 206, 254, 255.

§ 27-15-133. Credit against premium tax for domestic or foreign insurance company that writes policies within coast area of the state.

There shall be allowed as a credit against the tax imposed under Sections 27-15-103 through 27-15-129, in an amount equal to ten percent (10%) of the gross premium receipts on new policies written for essential property insurance (as defined in Section 83-34-1) within the coast area of this state on or after January 1, 2007, for any domestic or foreign insurance company which writes policies within the coast area; provided, however, the credit allowed hereunder shall not exceed One Hundred Thousand Dollars ($100,000.00) during any calendar year. The State Tax Commission and the Department of Insurance shall determine what constitutes new policies written, or covering risk, within the coast area of this state. Any tax credit claimed under this section but not used in any taxable year may be carried forward for the three (3) succeeding tax years. For purposes of this section, "coast area" shall have the meaning as provided in Section 83-34-1.

SOURCES: Laws, 2007, ch. 425, § 4, eff from and after passage (approved Mar. 22, 2007.)

Editor's Note — Laws of 2007, ch. 425, § 1, effective March 22, 2007, provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Economic Growth and Redevelopment Act of 2007."

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

PUBLIC UTILITIES

Sec.	
27-15-151.	Tax imposed.
27-15-153.	Telephone companies.
27-15-155.	Electric light and power companies.
27-15-157.	Railroad companies.
27-15-159.	Repealed.
27-15-161.	Repealed.
27-15-163.	Repealed.
27-15-165.	Pipeline companies.
27-15-167.	Application for privilege license; payment of tax.
27-15-169.	Repealed.
27-15-171.	Application for and issuance of additional privilege license; payment of additional tax.
27-15-173.	Time for payment of taxes; issuance of statewide license; levy of tax by local governments; applicability of provisions of Sales Tax Law.

§ 27-15-151. Tax imposed.

There is hereby imposed and levied and shall be collected annual privilege taxes, in addition to any and all other taxes imposed by law upon the persons, firms, co-partnerships, associations, or corporations, for the privilege of carrying on and continuing the businesses, activities, and exercising powers and rights under the laws of the State of Mississippi, which said tax shall be levied and collected as herein provided.

SOURCES: Codes, 1942, § 9599; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 27, eff from and after June 1, 1944.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 344 et seq.

CJS. 84 C.J.S., Taxation § 195.

§ 27-15-153. Telephone companies.

Upon each person engaged or continuing in this state in the business of operating a telephone company, there is hereby levied a tax of Four Cents (4¢) on each telephone in service at the end of the last calendar year, or Twenty-five Dollars ($25.00), whichever is greater.

SOURCES: Codes, 1942, § 9600; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 28; Laws, 1950, ch. 536; Laws, 1978, ch. 499, § 1, eff from and after June 1, 1978.

JUDICIAL DECISIONS

1. In general.

Word “conduit” as used in this section means a structure, usually installed underground, containing one or more ducts or tubes in which cables are installed, and it does not include a cable. Craig v. Southern Bell Tel. & Tel. Co., 208 Miss. 881, 45 So. 2d 732 (1950).

Unenclosed coaxial telephone cable, buried underground and not in conduit, is not subject to privilege tax imposed by this section. Craig v. Southern Bell Tel. & Tel. Co., 208 Miss. 881, 45 So. 2d 732 (1950).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 330, 331, 335 et seq.

CJS. 84 C.J.S., Taxation § 198.

§ 27-15-155. Electric light and power companies.

Upon each person engaging or continuing in this state in the business of operating an electric light or electric power plant, or maintaining a line or lines for the transmission of electricity, or electric current for electric lights or electric power, for each mile of pole line, as herein defined, operated or maintained in this state $22.50

The term "pole line" as used in this section shall include any line of poles carrying one or more wires, upon or through which is transmitted electricity or electric current with a voltage of 10,000 volts (10KV), or more, to or between distribution sub-stations where it is transformed for distribution to as many as twenty-five (25) customers, and shall include such lines as comprise the transmission system that connects up and serves such sub-stations, but shall exclude distribution or service lines from such sub-stations, and rural lines serving individual customers.

SOURCES: Codes, 1942, § 9601; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 29, eff from and after June 1, 1944.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 344 et seq.

CJS. 84 C.J.S., Taxation § 196.

§ 27-15-157. Railroad companies.

(1) Upon each person engaging or continuing in the business of operating a railroad, tax is assessed as follows:

For each railroad whose average earnings per mile are greater than Thirty-six Thousand Dollars ($36,000.00), the tax shall be Ninety Dollars ($90.00) per mile.

For each railroad whose average earnings per mile are greater than Thirty-two Thousand Dollars ($32,000.00), but not more than Thirty-six Thousand Dollars ($36,000.00), the tax shall be Eighty Dollars ($80.00) per mile.

For each railroad whose average earnings per mile are greater than Twenty-eight Thousand Dollars ($28,000.00), but not more than Thirty-two Thousand Dollars ($32,000.00), the tax shall be Seventy Dollars ($70.00) per mile.

For each railroad whose average earnings per mile are greater than Twenty-four Thousand Dollars ($24,000.00), but not more than Twenty-eight Thousand Dollars ($28,000.00), the tax shall be Sixty Dollars ($60.00) per mile.

For each railroad whose average earnings per mile are greater than Twenty Thousand Dollars ($20,000.00), but not more than Twenty-four Thousand Dollars ($24,000.00), the tax shall be Fifty Dollars ($50.00) per mile.

For each railroad whose average earnings per mile are greater than Sixteen Thousand Dollars ($16,000.00), but not more than Twenty Thousand Dollars ($20,000.00), the tax shall be Forty Dollars ($40.00) per mile.

For each railroad whose average earnings per mile are greater than Twelve Thousand Dollars ($12,000.00), but not more than Sixteen Thousand Dollars ($16,000.00), the tax shall be Thirty Dollars ($30.00) per mile.

For each railroad whose average earnings per mile are greater than Eight Thousand Dollars ($8,000.00), but not more than Twelve Thousand Dollars ($12,000.00), the tax shall be Twenty Dollars ($20.00) per mile.

For each railroad whose average earnings per mile are greater than Four Thousand Dollars ($4,000.00) per mile, but not more than Eight Thousand Dollars ($8,000.00), the tax shall be Ten Dollars ($10.00) per mile.

For each railroad whose average earnings per mile are less than Four Thousand Dollars ($4,000.00) per mile, the tax shall be Five Dollars ($5.00) per mile.

(2) For the purposes of subsection (1) of this section, the average earnings per mile for a railroad shall be calculated for each line or branch operated in this state based on the proportion that the gross receipts from business for the line or branch bears to the number of miles operated at the close of the preceding business year. If the railroad line or branch is new or had no earnings during the preceding business year, the tax shall be Five Dollars ($5.00) per mile.

SOURCES: Codes, 1942, § 9602; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 30; Laws, 1995, ch. 369, § 1, eff from and after passage (approved March 15, 1995).

JUDICIAL DECISIONS

1. In general.

Where railroad, which was licensed to operate its own lines in state, on September 1st, 1940, took over operation of the lines of another railroad, which had paid privilege tax for the tax period ending December 1, 1940, according to the classification thereof fixed by the tax commissioner, state could not again collect tax for former's operation of latter's lines during period in question on a classification of the same property for the privilege of operating a railroad over the same, since the privilege of using the lines in question throughout such period had already been paid for. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Where defendant railroad, licensed to operate its own lines in the state, on September 1, 1940, took over the operation of the lines of Mobile & Ohio R. R. which had paid the privilege tax on its lines according to the classification thereof fixed by the tax commissioner, for the tax period ending December 1st, 1940, such classification given the Mobile & Ohio R. R. if personal to it and made after an opportunity was afforded for a hearing, could not be invoked as an assessment or classification against defendant, for its operation during such period, without further affirmative action by the tax commissioner. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

A railroad had no just cause of complaint because of the fact that it was called on to pay an ad valorem and an acreage tax on its land in common with other land owners, and in addition thereto a tax on the privilege of operating its railroad, since the two taxes were separate and distinct. Yazoo & Miss. V. Ry. v. Board of Miss. Levee Comm'rs, 188 Miss. 889, 195 So. 704 (1940), appeal dismissed, 311 U.S. 607, 61 S. Ct. 21, 85 L. Ed. 384 (1940).

Privilege tax on railroad not unconstitutional as denying equal protection of the laws, nor is the tax objectionable because it is graded according to railroad mileage. Yazoo & Miss. V. Ry. v. Board of Miss. Levee Comm'rs, 188 Miss. 889, 195 So. 704 (1940), appeal dismissed, 311 U.S. 607, 61 S. Ct. 21, 85 L. Ed. 384 (1940).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 194, 196, 317-329.

CJS. 74 C.J.S., Railroads § 38.
84 C.J.S., Taxation §§ 209 et seq., 751.

§ 27-15-159. Repealed.

Repealed by Laws, 1978, ch. 445, § 1, eff from and after July 1, 1978.
[Codes, 1942, § 9603; Laws, 1940, ch. 120; 1944, ch. 138, § 31]

Editor's Note — Former § 27-15-159 imposed a privilege tax upon persons operating a telegraph company.

§ 27-15-161. Repealed.

Repealed by Laws, 1974, ch. 470, eff from and after June 1, 1974.
[Codes, 1942, § 9604; Laws, 1940, ch. 120; 1944, ch. 138, § 32]

Editor's Note — Former § 27-15-161 imposed a privilege tax on a person engaging or continuing the business of operating a sleeping car or palace car business within the state.

§ 27-15-163. Repealed.

Repealed by Laws, 1978, ch. 445, § 1, eff from and after July 1, 1978.
[Codes, 1942, § 9605; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 33]

Editor's Note — Former § 27-15-163 imposed a privilege tax upon a person operating an express business, transporting freight or passengers from one point to another within the state.

§ 27-15-165. Pipeline companies.

Upon each person operating a pipeline in or through this state or engaged in transporting in or through this state crude oil, liquid petroleum products, and natural or artificial gas through pipes or conduits, for the privilege of exercising or enjoying such right and power in this state, and for the privilege of enjoying and receiving the benefit and protection of the government and laws of this state, there is levied a tax, in addition to all other taxes, as follows:

On each mile of pipe having a diameter of less than twelve (12) inches	$15.00
On each mile of pipe having a diameter of twelve (12) inches and less than fifteen (15) inches	$37.50
On each mile of pipe having a diameter of fifteen (15) inches and less than twenty (20) inches	$52.50
On each mile of pipe having a diameter of twenty (20) to twenty-six (26) inches, inclusive	$75.00
On each mile of pipe having a diameter of over twenty-six (26) inches	$125.00

The term "pipeline" as used in this section shall apply to both interstate and intrastate trunk lines, but shall not apply to those pipelines, known as service lines, used solely for distributing gas or other petroleum products in or near cities, towns, and villages to the ultimate consumer. And this section shall not apply to those persons, firms or corporations mining or producing gas or oil on which a privilege tax measured by gross production is imposed and paid in this state.

SOURCES: Codes, 1942, § 9606; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 34; Laws, 1952, ch. 410, § 1.

JUDICIAL DECISIONS

1. In general.

State tax collector had no authority to maintain a mandamus suit to compel the State Tax Commissioner to assess back privilege taxes on a pipeline within the state so as to enable such collector to thereafter recover past due privilege taxes against a taxpayer. Craig v. Stone, 194 Miss. 767, 11 So. 2d 433 (1943).

The recital in the ad valorem assessment by the State Tax Commission of the length and diameter of an operator's pipeline was not binding on the state tax commission when engaged in ascertaining the amount of the privilege tax due by the operator. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

In assessing the privilege tax imposed for the operation of a pipeline, the tax commissioner is not bound by the admission of the taxpayer as to the length and diameter of the pipeline, it being his duty to determine whether the claim of the taxpayer is correct, and he has the right to require it to furnish such other information as may be necessary to ascertain the correct amount of tax due, and his determination, when set forth in an order after hearing and passing upon objections, is final except as to the right of review by the court. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

Suit to collect the privilege tax imposed upon the operation of a pipeline may be brought when, but not before, the amount of the tax due has been ascertained by the state tax commissioner by the method prescribed by statute. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

Absence of an order by the state tax commissioner setting forth the "units to be used in determining the tax due to be paid by the public utilities" warranted the dismissal of a suit by the state tax collectors to recover privilege taxes alleged to be due for the operation of a pipeline. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

The imposition of privilege tax on foreign corporations selling to distributors in the state natural gas piped from another state, after reducing the pressure, was invalid as a burden upon interstate commerce. Mississippi Tax Comm'n v. Interstate Natural Gas Co., 284 U.S. 41, 52 S. Ct. 62, 76 L. Ed. 156 (1931).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 343.

CJS. 84 C.J.S., Taxation § 207.

§ 27-15-167. Application for privilege license; payment of tax.

Each person required by Sections 27-15-151 through 27-15-165 to pay a privilege tax for doing business in this state, shall annually, on or before the first day of December each year, make and file with the State Tax Commission an application for a privilege license, and shall pay the tax as provided in those sections. The application forms shall be furnished by the State Tax Commission to the applicant. The applicant must provide all information required.

SOURCES: Codes, 1942, § 9607; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 35, eff from and after June 1, 1944; Laws, 1995, ch. 369, § 2, eff from and after passage (approved March 15, 1995).

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3 et seq.

JUDICIAL DECISIONS

1. In general.

Where railroad, which was licensed to operate its own lines in state, on September 1st, 1940, took over operation of the lines of another railroad, which had paid privilege tax for the tax period ending December 1, 1940, according to the classification thereof fixed by the tax commissioner, state could not again collect tax for formers operation of latter's lines during period in question on a classification of the same property for the privilege of operating a railroad over the same, since the privilege of using the lines in question throughout such period had already been paid for. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Where defendant railroad, licensed to operate its own lines in the state, on September 1, 1940, took over the operation of the lines of Mobile & Ohio R. R. which had paid the privilege tax on its lines, according to the classification thereof fixed by the tax commissioner, for the tax period ending December 1st, 1940, such classification given the Mobile & Ohio R. R., if personal to it and made after an opportunity was afforded for a hearing, could not be invoked as an assessment or classification against defendant, for its operation during such period, without further affirmative action by the tax commissioner. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

The recital in the ad valorem assessment by the state tax commission of the length and diameter of an operator's pipeline was not binding on the state tax commission when engaged in ascertaining the amount of the privilege tax due by the operator under former tax statute (Laws 1935, ex sess ch. 20, § 180). Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 1, 2.

§ 27-15-169. Repealed.

Repealed by Laws, 1995, ch. 369, § 5, eff from and after passage (approved March 15, 1995).

[Codes, 1942, § 9608; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 36; Laws, 1985, ch. 455, § 6, eff from and after passage (approved March 29, 1985)]

Editor's Note — Former § 27-15-169 provided for determination of the tax by the commissioner.

§ 27-15-171. Application for and issuance of additional privilege license; payment of additional tax.

If at any time any person liable for a tax under Sections 27-15-151 through 27-15-165 increases his classifications so as to require the payment of an additional tax, or shall begin business or construct or operate additional taxable units, application shall be made to the Tax Commission for additional privilege license, and upon the determination by the Tax Commission of the amount of tax due, shall pay the same. The Tax Commission shall issue such privilege license to expire on December 1 following, and shall collect the pro rata annual tax according to the number of months between the date of liability and December 1 following.

SOURCES: Codes, 1942, § 9609; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 37; Laws, 1995, ch. 369, § 3, eff from and after passage (approved March 15, 1995).

Cross References — Tax Commission as meaning Department of Revenue, see § 27-15-3.

JUDICIAL DECISIONS

1. In general.

Where railroad, which was licensed to operate its own lines in state, on September 1st, 1940, took over operation of the lines of another railroad, which had paid privilege tax for the tax period ending December 1, 1940, according to the classification thereof fixed by the tax commissioner, state could not again collect tax for former's operation of latter's lines during period in question on a classification of the same property for the privilege of operating a railroad over the same, since the privilege of using the lines in question throughout such period had already been paid for. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Where defendant railroad, licensed to operate its own lines in the state, on September 1, 1940, took over the operation of the lines of Mobile & Ohio R. R. which had paid the privilege tax on its lines according to the classification thereof fixed by the tax commissioner, for the tax period ending December 1st, 1940, such classification given the Mobile & O. R. R., if personal to it and made after an opportunity was afforded for a hearing, could not be invoked as an assessment or classification against defendant, for its operation during such period, without further affirmative action by the tax commissioner. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 1, 2.

§ 27-15-173. Time for payment of taxes; issuance of statewide license; levy of tax by local governments; applicability of provisions of Sales Tax Law.

The taxpayer shall complete the application and shall pay the tax imposed by Sections 27-15-151 through 27-15-165 on or before the first day of December in each year (except as provided in the next preceding section), but failure to receive an application for a license does not exempt any taxpayer from the payment of damages as imposed by this chapter. Upon the payment of the tax, the Tax Commission shall issue a statewide license as herein provided.

The privilege tax herein imposed by the foregoing sections on telephone, railroad, electric light and power companies, and pipeline companies shall be for a statewide purpose and no board of supervisors nor municipality shall levy any privilege tax upon any of the companies.

All administrative provisions of the Mississippi Sales Tax Law, including those which provide for collection and administrative appeals procedures, fix damages, penalties and interest for failure to comply with the provisions of the sales tax law, and all other requirements and duties imposed upon any license or taxpayer, apply to all persons liable for taxes, fees and other monies imposed by Sections 27-15-151 through 27-15-165. In carrying out his duties under the provisions of Sections 27-15-151 through 27-15-165, the Chairman of the State Tax Commission may exercise all of the power and authority granted to the chairman under the Mississippi Sales Tax Law with respect to licensees or taxpayers. However, if any of the provisions of this chapter relating to the administration, imposition or collection of the taxes, fees and penalties under Sections 27-15-151 through 27-15-165 conflict with the provisions of the Mississippi Sales Tax Law, then the provisions of this chapter shall govern.

SOURCES: Codes, 1942, § 9610; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 38; Laws, 1995, ch. 369, § 4, eff from and after passage (approved March 15, 1995).

Cross References — Tax Commission as meaning Department of Revenue and Chairman of the State Tax Commission as meaning the Commissioner of Revenue of the Department of Revenue, see § 27-15-3.

GENERAL ADMINISTRATIVE PROVISIONS APPLICABLE TO CHAPTER

SEC.

27-15-201. License; where obtained.
27-15-203. License; application by taxpayer.
27-15-205. License; issuance, duration, suspension and reinstatement.
27-15-207. Taxes required where taxpayer engages in several businesses.
27-15-209. License to be taken out on increased business.
27-15-211. License may be taken for part of year, when.
27-15-213. Officer to notify all persons liable for a privilege tax.
27-15-215. Penalty for failure to procure license; collection of unpaid taxes.
27-15-217. Post license in conspicuous place, or exhibit same.
27-15-219. License to be a personal privilege.
27-15-221. Unlawful business not legalized.
27-15-223. Printing of privilege tax license blanks.
27-15-225. Privilege tax exemptions; clubs, etc.
27-15-227. Privilege tax exemptions; elderly or persons with disabilities and hotel enterprises.
27-15-229. Privilege tax exemptions; national and state banks.
27-15-231. Privilege tax exemptions; municipalities.

27-15-233. Privilege tax exemptions; activities in fair enclosures.
27-15-235. Privilege tax exemptions; certificate.
27-15-237. Privilege tax exemptions; personal privilege; nontransferability and display of certificate; penalties.
27-15-239. Disposition of monies collected; privilege tax record to be kept.
27-15-241. Monthly report.

§ 27-15-201. License; where obtained.

All licenses required by this chapter shall be obtained from the tax commissioner or the commissioner of insurance, except in cases where the law provides that some other officer shall issue the license.

SOURCES: Codes, 1942, § 9666; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 47, eff from and after June 1, 1944.

Cross References — Tax commissioner as meaning the Commissioner of Revenue of the Department of Revenue, see § 27-15-3.

Local privilege tax, see § 27-17-451.

§ 27-15-203. License; application by taxpayer.

Every person required to obtain a license for the privilege of engaging in any business for which a privilege tax is required shall make application therefor in writing to the officer who is required to collect the tax. The application for license shall be filed on blanks to be furnished by the State Auditor for that purpose, and shall be subscribed and sworn to by the person owning the business, or having an ownership interest therein; or the officer who is required to collect the tax, or his duly authorized agent, may certify to the application. If the applicant is a corporation, a duly authorized agent shall execute the application.

The application shall, in addition to such other information as the officer who is required to collect the tax may require, show the name of such person or corporation, and in case of a partnership, the name of each partner thereof; the person's, firm's or corporation's business office address, the location of the place of business to which the license shall apply, and the nature of the business in which engaged, and any other information the officer who is required to collect the tax may require.

The application shall contain all the information necessary for the officer collecting the tax to properly classify the applicant and ascertain the amount of tax due.

The application shall be accompanied by the amount of the privilege tax required by law.

Any person who shall willfully make any false statement in an application for a privilege license shall be guilty of a misdemeanor, and upon conviction thereof, shall be required to pay as damages double the amount of the difference between the tax paid and that which should have been paid, in addition to the fine and imprisonment imposed.

It is specifically provided that the officer taking the application for a privilege license shall carefully preserve the same for a period of three (3) years for the use of the grand jury, the courts of the state, or any duly authorized officer of the State of Mississippi, and any officer who shall refuse or fail to take or require the application, or affidavit as herein required, shall be guilty of a misdemeanor and subject to the penalties therefor.

Each application or filing made under this section shall include the Social Security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 9667; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 48; Laws, 1997, ch. 588, § 15, eff from and after July 1, 1997.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1997, ch. 588, § 150, effective July 1, 1997, provides as follows:

"SECTION 150. Any person or entity shall be absolutely immune from any liability arising from compliance with the dictates of this act unless such conduct by the person or entity is willful and intentional."

Cross References — Local privilege tax, see § 27-17-453.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 50 et seq.

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-15-205. License; issuance, duration, suspension and reinstatement.

Upon the receipt of the application herein required, and payment of the amount shown thereby to be due for the privilege to be exercised, the officer to whom the application is made shall determine if the application is in proper form, and if the correct amount be tendered, and may require the applicant to furnish such other and further information as in his opinion is necessary to ascertain the correct amount of tax due. When the correct amount of the tax has been so ascertained, the officer shall issue to the applicant taxpayer a privilege license according to such application, and shall date the same as of the first day of the month of its issuance. The officer issuing the license shall countersign the same when issued by him, and he shall enter the same in the register prescribed by law therefor. The license issued by collectors as herein provided shall be executed in duplicate, the original shall be delivered to the licensee by the officer, and the duplicate shall be attached to the application therefor, and preserved by the officer as a public record.

If, however, such officer, shall, before issuing the license, or at any time thereafter, have reason to believe that the statements of the business contained in the application are incorrect or false in any material particular, the officer shall duly notify the applicant wherein the supposed discrepancy lies, and he is hereby empowered to require the applicant to render such other information as will enable him to determine the proper tax due. After making such determination of the proper tax due, if the license has not been issued, the officer shall forthwith proceed to collect the amount of tax due; and if the license shall have been issued under the original application, he shall collect the difference between the sum shown to be properly due, and the sum paid with the original application, and shall issue an additional license therefor which shall expire at the same time as the original. If the additional tax is paid within sixty (60) days after the determination by the office of the proper amount due, no penalty shall be applied. If the taxpayer shall willfully fail or refuse to furnish the information requested by such officer, he shall be liable for damages as in other cases of payment of an insufficient privilege tax, and may be proceeded against civilly or criminally as otherwise provided herein, and shall suffer the penalties provided herein therefor.

The license issued pursuant to this section shall be good, usable, and valid for one (1) year after the date thereof, or for such other period as is fixed by law for the privilege, which period shall be so designated in the license. All statewide licenses shall be issued for a period no longer than one (1) year.

The officer issuing the license shall be authorized to suspend any license issued to any person pursuant to this section for being out of compliance with an order for support, as defined in 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or Section 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or Section 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or Section 93-11-163, as the case may be, shall control.

SOURCES: Codes, 1942, §§ 9427, 9668; Laws, 1940, ch. 120; Laws, 1944, ch. 138, §§ 1, 49; Laws, 1996, ch. 507, § 8; Laws, 2009, ch. 492, § 56, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 146 provides:

"SECTION 146. Section 145 of this act shall take effect and be in force from and after July 1, 2009, and the remainder of this act shall take effect and be in force from and after July 1, 2010."

Laws of 2009, ch. 492, § 144, effective July 1, 2010, provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit,

approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Local privilege tax, see § 27-17-455.

Crime of collecting privilege tax without issuing license, see § 97-11-49.

JUDICIAL DECISIONS

1. In general.

In assessing the privilege tax imposed for the operation of a pipeline the tax commissioner is not bound by the admission of the taxpayer as to the length and diameter of the pipeline, it being his duty to determine whether the claim of the taxpayer is correct, and he has the right to require it to furnish such other information as may be necessary to ascertain the correct amount of tax due, and his determination, when set forth in an order after hearing and passing upon objections, is final except as to the right of review by the court. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

The recital in the ad valorem assessment by the state tax commission of the length and diameter of an operator's pipeline was not binding on the state tax commission when engaged in ascertaining the amount of the privilege tax due by the operator. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

Suit to collect the privilege tax imposed upon the operation of a pipeline may be brought when, but not before, the amount of the tax due has been ascertained by the state tax commissioner by the method prescribed by statute. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 50 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23, 24.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 25.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41-49.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 388.

CJS. 53 C.J.S., Licenses §§ 70-72.

§ 27-15-207. Taxes required where taxpayer engages in several businesses.

Any person pursuing or engaging in more than one (1) of the businesses for which a privilege tax is imposed, shall pay separately the privilege tax imposed upon each separate business so conducted, engaged in, or pursued except as otherwise specifically provided by this chapter, and if the business made taxable, or the privilege to be exercised, is carried on at two (2) or more separate places, a separate license for each place or location of such business shall be obtained.

SOURCES: Codes, 1942, § 9669; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 50, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-459.

§ 27-15-209. License to be taken out on increased business.

In all cases where a privilege tax is required for carrying on any business in this state, and a privilege license has been obtained for the same, and afterwards during the period covered by said license, the licensee shall desire to increase his business to a classification for which a higher privilege tax is required, he shall before increasing same, procure an additional license, but shall only be required to pay for such additional privilege license on such higher classification; the same to be prorated on the annual rate according to the number of months unexpired remaining in the period for which the original license was issued, and the additional license shall expire at the same time as the original license. The officer issuing the license shall certify on the face thereof that it is an additional license, and the period for which it is issued.

SOURCES: Codes, 1942, § 9670; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 51, eff from and after June 1, 1944.

§ 27-15-211. License may be taken for part of year, when.

In the event a person engaged in business is liable for two (2) or more annual privilege taxes, or has two (2) or more annual privilege licenses, which licenses expire in different months desires to have all his privilege tax licenses expire on a common date, he may apply to the officer whose duty it is to collect the privilege tax at the time any annual privilege tax license expires and have issued a privilege tax license which will expire on the desired common date; and he shall pay for such privilege tax license at the pro rata annual rate according to the number of months in the period between the date the license is issued and its date of expiration. The officer issuing such license for less than a year shall certify on the face thereof that it is issued to provide a common expiration date, the period for which it is issued, and the amount paid therefor. A person engaged in business, who thereafter becomes liable for a privilege tax for any new kind of business, may in like manner obtain a license for a less period than one (1) year. But this section shall not apply to any person who by reason of failure to procure a license, becomes liable for the penalty provided by this chapter, nor to any person beginning business, but any license issued to a person beginning business shall be issued for one (1) year, unless elsewhere specifically provided.

SOURCES: Codes, 1942, § 9671; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 52, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-463.

§ 27-15-213. Officer to notify all persons liable for a privilege tax.

On or before the first day of each month, the collector shall mail to each privilege taxpayer holding an annual license, and whose license will expire during the following month, as shown by his record, a notice, that the license will expire, and that a new privilege license must be procured during the said following month, and shall enclose therewith an application blank for a new license; but the failure to send or receive such notice shall not exempt such privilege taxpayer from any penalties prescribed by law. Immediately upon a receipt of an assessment by the tax commissioner, of privilege taxes due, the collector shall mail to the person liable for the privilege license, or licenses, and damages shown in the assessment, a notice thereof and the person liable for the privilege license and damages named in the assessment shall have ten (10) days, after the notice has been given, within which to pay the tax.

SOURCES: Codes, 1942, § 9672; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 53, eff from and after June 1, 1944.

Cross References — Tax commissioner as meaning Commissioner of Revenue of the Department of Revenue, see § 27-15-3.

Local privilege tax, see § 27-17-465.

§ 27-15-215. Penalty for failure to procure license; collection of unpaid taxes.

All persons liable for privilege taxes imposed by this chapter, who shall fail to procure the license therefor before beginning the business for which a privilege tax is required, or who shall fail to renew, during the month in which it is due, the license on a business for which he has theretofore procured a privilege license, shall in each or either instance, be liable for the amount of the tax required for such business and fifty percent (50%) thereof, and it is hereby made the duty of the commissioner, whose duty it is to collect the tax on such business, to collect the said tax and penalty; and the commissioner, or his duly authorized representative, may make immediate demand upon such dealer for the payment of all such taxes and penalties.

If any taxes and penalties found to be due are not paid on demand, the commissioner, whose duty it is to collect the tax on such business, may forthwith issue a warrant under official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person owing the tax, found within his county, for the payment of the amount thereof, with added damages, penalties, and cost of entering and executing the warrant, and to return such warrant to the commissioner and pay to him money collected by virtue thereof, by a time to be therein specified, not more than sixty days from the date of the warrant. The sheriff shall, within five days after the receipt of the warrant, file with the circuit clerk of his county a copy thereof, and thereupon the circuit clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax, or portion thereof, and damages, for which the warrant is issued, and the date when such copy is filed; and thereupon the amount of such warrant or warrants so docketed shall become a lien upon the title to and interest in the real and personal property, including choses in action, of the person against whom it is issued, in the same manner as a judgment duly enrolled in the office of such clerk. The sheriff thereupon shall proceed upon the same in all respects with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment or attachment proceedings of a court of record; and shall be entitled to the same fee for his service in executing the warrant as now allowed by law for like service, to be collected in the same manner as provided by law for like service.

The commissioner shall endorse across the face of the license issued the words: "Collected as damages," showing the amount; and he shall account for all such penalties as he is required to account for privilege taxes collected under this chapter. In addition to the hereinabove described penalties, the delinquent taxpayer shall be guilty of a misdemeanor, and subject to the penalties therefor.

SOURCES: Codes, 1942, § 9673; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 54; Laws, 1958, ch. 562, § 10, eff July 1, 1958.

Cross References — Enrollment of judgments, generally, see § 11-7-189.

Attachment at law against debtors, see § 11-33-1 et seq.

Executions, generally, see § 13-3-111 et seq.

Sheriff's execution and return of process, see § 19-25-37.

Penalties for misdemeanor, see § 27-15-251.

Local privilege tax, see § 27-17-467.

Action to recover tax, penalty and interest, see § 27-35-5.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

In a suit for the breach of a commercial lease, the tenant was not prohibited from claiming lost profits resulting from the club's sale of beer and he did not have a license to sell beer where any failure in obtaining a liquor license was not a contributing cause of the damages that he tenant sought. Evans v. Clemons, 872 So. 2d 23 (Miss. Ct. App. 2003), writ of certiorari denied by 873 So. 2d 1032, 2004 Miss. LEXIS 475 (Miss. 2004).

Where defendant railroad, licensed to operate its own lines in the state, on September 1, 1940, took over the operation of the lines of Mobile & Ohio R. R. which had paid the privilege tax on its lines according to the classification thereof fixed by the tax commissioner, for the tax period ending December 1, 1940, such classification given the Mobile & Ohio R. R., if personal to it and made after an opportunity was afforded for a hearing, could not be invoked as an assessment or classification against defendant, for its operation during such period, without further affirmative action by the tax commissioner. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Where railroad, which was licensed to operate its own lines in state, on September 1st, 1940, took over operation of the lines of another railroad, which had paid privilege tax for the tax period ending December 1, 1940, according to the classification thereof fixed by the tax commissioner, state could not again collect tax for former's operation of latter's lines during period in question on a classification of the same property for the privilege of operating a railroad over the same, since the privilege of using the lines in question throughout such period had already been paid for. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Neither this section nor any other section of the act designates either the duty to collect the tax, or the right to enforce it by suit, as exclusive in the tax commissioner. Craig v. J.A. Jones Constr. Co., 195 Miss. 378, 15 So. 2d 45 (1943).

State tax collector, under statute giving him general authority to collect taxes, had authority to maintain suit to collect contractor's license fee and privilege tax on contract by nonresident corporation to construct an army camp within the state, notwithstanding statute imposing the tax provides that application for license should be made to tax commissioner and delegates the duty to such commissioner to collect the tax. Craig v. J.A. Jones Constr. Co., 195 Miss. 378, 15 So. 2d 45 (1943).

The local activity of a foreign corporation, not qualified to do business in the state as such, performed in the installation, adjustment and testing of certain air conditioning systems in buildings located in the state and constituting a substantial part of the performance of the contract for the sale of the machinery and equipment which it manufactured outside the state and shipped into the state in interstate commerce for use in air conditioning such buildings, was subject to the tax imposed by previous similar enactment of this section, and the imposition of such tax was not a violation of the interstate commerce clause of the United States Constitution. Stone v. York Ice Mach. Corp., 193 Miss. 638, 10 So. 2d 380 (1942).

Where a substantial portion of a contract for the sale, installation, adjustment and testing of machinery and equipment, manufactured by a foreign corporation outside the state and shipped into the state by interstate commerce, is performed in the state, as a condition precedent to its final acceptance by the purchaser, in the exercise of a local activity, the contention of such corporation as to its nonliability for the taxes in question, if sustained, would work an unjust discrimination against those residing in the state who may undertake to manufacture and install machinery and equipment in connection with the project enumerated by the taxing statute and also where the materials for any of such projects are ordered and shipped in interstate commerce for manufacturers out of the state and assembled and installed by local residents who may be engaged in the business of contracting in the state and liable for the taxes in question. Stone v. York Ice Mach. Corp., 193 Miss. 638, 10 So. 2d 380 (1942).

The penalties provided have no application to the tax on life insurance premiums, but apply alone to a failure to pay and renew annually the license to do business in the state, although the premium tax is denominated in the statute as an additional license tax. State ex rel. Gully v. Mutual Life Ins. Co., 189 Miss. 830, 196 So. 796 (1940), suggestion of error sustained in part, overruled in part, 189 Miss. 830, 198 So. 763 (1940).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 74 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 72.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73. 22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 382.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 11-15.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 388.

CJS. 53 C.J.S., Licenses § 101 et seq.

§ 27-15-217. Post license in conspicuous place, or exhibit same.

Each privilege license issued shall be kept posted in a conspicuous part of the place of business of the person to whom such license has been issued where the business carried on has a permanent location, and if the business is such that the license cannot be so posted, then the licensee shall have such license in his actual possession at the time of carrying on such business or doing the act named. In all cases where the question arises as to whether a privilege license has been procured, the license or record thereof, if in existence, shall be the only evidence of payment.

When a proper holder of a privilege license to engage in any business at any definite location in a county desires to remove same to another location in the same county, the tax collector shall upon proper application in writing by the licensee, grant to such person the right to make such move, and shall endorse upon the said license his approval of the change in location.

SOURCES: Codes, 1942, § 9674; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 55, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-469.

§ 27-15-219. License to be a personal privilege.

The privilege license herein provided shall be and constitute a personal privilege to the person named therein to conduct the business specified in the license, and shall not be transferable to any other person, and shall be construed to limit to the county and location specified therein the person named in the license in conducting the business and exercising the privilege named, unless otherwise provided by this chapter, and such license shall not exempt from taxation any property used in the business except as specifically provided by law.

No change in the name of the firm, nor the taking in of a new partner, nor the withdrawal of one or more members of the firm shall be considered as commencing business; but if any one or more of the partners remain in the firm, the business shall be regarded as continuing.

SOURCES: Codes, 1942, § 9675; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 56, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-471.

JUDICIAL DECISIONS

1. In general.

Where defendant railroad, licensed to operate its own lines in the state, on September 1, 1940, took over the operation of the lines of Mobile & Ohio R. R. which had paid the privilege tax on its lines according to the classification thereof fixed by the tax commissioner, for the tax period ending December 1, 1940, such classification given the Mobile & Ohio R. R., if personal to it and made after an opportunity was afforded for a hearing, could not be invoked as an assessment or classification against defendant, for its operation during such period, without further affirmative action by the tax commissioner. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

Where railroad, which was licensed to operate its own lines in state, on September 1st, 1940, took over operation of the lines of another railroad, which had paid privilege tax for the tax period ending December 1, 1940, according to the classification thereof fixed by the tax commissioner, state could not again collect tax for former's operation of latter's lines during period in question on a classification of the same property for the privilege of operating a railroad over the same, since the privilege of using the lines in question throughout such period had already been paid for. Craig v. Gulf, M. & Ohio R. Co., 196 Miss. 172, 16 So. 2d 760 (1944).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 65.

§ 27-15-221. Unlawful business not legalized.

The issuance of a privilege license, or the payment of a tax required therefor, shall not make lawful any business, employment transaction, article or device, or the operation thereof, contrary to any statute of this state, or any ordinance of any municipality thereof.

SOURCES: Codes, 1942, § 9676; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 57, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-473.
Crimes involving gambling, see § 97-33-1 et seq.
Crimes relating to cane racks, punch boards, etc., see § 97-33-7.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 10.

CJS. 53 C.J.S., Licenses §§ 1, 2, and 4.

§ 27-15-223. Printing of privilege tax license blanks.

It shall be the duty of the officer collecting the taxes to prepare and have printed the proper privilege tax license blanks necessary to carry into effect the laws relating to privilege taxes and there shall be printed on each license at the bottom thereof, the words: “This license shall not make lawful any act or thing declared to be unlawful by the State of Mississippi." All such privilege tax license blanks shall be printed in the form prescribed by the officer collecting the tax and shall be imprinted with the fiscal year for which the blanks are to be issued, and shall be numbered consecutively beginning with number one (1) of each fiscal year; and shall be made in duplicate, the original and duplicate to bear the same serial number and be alike in all respects, except that they be marked "original," "duplicate," and be of different colors.

SOURCES: Codes, 1942, § 9683; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 63, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-475.

§ 27-15-225. Privilege tax exemptions; clubs, etc.

Clubs for the promotion or development of the art of canning, preserving or bottling; the art of cooking; art of sewing or handwork; the art of drawing or painting; or otherwise, the art of home or domestic science may sell their products without paying any of the taxes levied by this chapter; provided, this shall not be construed to authorize any person, persons, club or clubs to promote such business as a commercial enterprise or to sell things not produced by themselves.

SOURCES: Codes, 1942, § 9677; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 58, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-485.
Tax exemption of cooperative associations, generally, see § 79-19-53.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.
CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-15-227. Privilege tax exemptions; elderly or persons with disabilities and hotel enterprises.

(1) Any person sixty-five (65) years old or older, or any person blind, deaf or dumb, or maimed by loss of hand or foot, or loss of the use of the hand or foot, or any citizen of the United States who is disabled or suffering from an infirmity to the extent that he is unable to perform physical labor of not more than fifty percent (50%) of normal ability, and whose annual gross income is not more than Nine Hundred Dollars ($900.00), may exercise any of the privileges named below in this section, without the payment of a privilege tax under the provisions of this chapter, which exemption shall be restricted and limited to the following businesses:
Broom factories, checking rooms, drays, fur dealers, ice cream carts, mattress renovators, sign painters, shoe repair shops, insurance agents.

(2) The privilege tax shall not apply to bakeries, checking rooms, and cold storage plants when such enterprises are operated in connection with a hotel solely for the use and convenience of its patrons, and the product or service of such enterprises is not sold to others than patrons of the hotel.

(3) Any person claiming an exemption under this section shall apply for and obtain a certificate of exemption as provided in Sections 27-15-235 and 27-15-237.

SOURCES: Codes, 1942, § 9678; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 59, eff from and after June 1, 1944.

Cross References — Insurance taxes, see § 27-15-81 et seq.

Local privilege tax, see § 27-17-479.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Form 73.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-15-229. Privilege tax exemptions; national and state banks.

None of the provisions of this chapter shall be construed as imposing a privilege tax on any national bank now or hereafter located in the State of Mississippi, or on any bank incorporated or chartered under the laws of the State of Mississippi.

SOURCES: Codes, 1942, § 9678; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 59, eff from and after June 1, 1944.

§ 27-15-231. Privilege tax exemptions; municipalities.

No tax levied under the provisions of this chapter shall be levied, assessed or collected from or against, any municipality in this state which operates any business which is taxed hereunder, it being the intention of the legislature that all municipalities are specifically exempted from the provisions of this chapter and it shall never be construed as being the intention of the legislature to levy any privilege tax against any municipality in the state.

SOURCES: Codes, 1942, § 9679; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 59A, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-483.

§ 27-15-233. Privilege tax exemptions; activities in fair enclosures.

No privilege tax license shall be required of hotels, restaurants, fruit stands and vendors of soft drinks, circuses, exhibitions, street fairs, or other amusements when the same are held within the enclosure of and in cooperation with the annual holding of any state, county or community fair or any fair held for the benefit of the public where no dividends are declared to the stockholders thereof, and the proceeds thereof are used exclusively for the operation, maintenance and improvement of such fair.

SOURCES: Codes, 1942, § 9682; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 62, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-487.

§ 27-15-235. Privilege tax exemptions; certificate.

Any person desiring to avail himself of any of the exemptions provided in Sections 27-15-225 through 27-15-231, shall, before engaging in such business, file with the officer whose duty it is to collect the privilege tax, an application for the exemption certificate accompanied by an affidavit stating fully the grounds upon which such exemption is claimed. If the exemption be claimed on grounds other than a manifest visible disability, the above required affidavit must be accompanied by a certified statement from a county health officer, or the United States Veterans Bureau in the case of veterans of the World War, showing that the applicant is disabled to the extent of fifty percent (50%) as defined in Section 27-15-227. If fully satisfied of the facts and of the justices of such claim, the officer shall issue to such applicant a certificate of exemption which shall authorize such person to engage in the business therein designated for a period of one year. The procedure above set forth shall be required in every instance for the continuance of such business during each and every year subsequent to that for which the exemption certificate was originally granted. Provided, that the tax collector before issuing any additional certificate shall require the applicant to show to his satisfaction that the gross income of the applicant for the preceding year was not more than Nine Hundred Dollars ($900.00).

SOURCES: Codes, 1942, § 9680; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 60, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-489.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-15-237. Privilege tax exemptions; personal privilege; nontransferability and display of certificate; penalties.

The certificate of exemption provided for above is hereby declared to be a personal privilege, peculiar to the grantee and is not transferable, and no business may be conducted thereunder by any person other than the grantee.

The holder of any such certificate of exemption is hereby required to keep and display the same as in the case of the holder of a privilege license. Any person who shall engage in any business as an exempt person, without first complying with the requirements above set forth, shall be liable to prosecution and punishment as is provided for persons doing business without a license, and in addition thereto, shall be liable for any and all privilege taxes and damages provided for in the case of non-exempt persons failing to obtain privilege licenses; and any person who shall make a false representation, or affidavit, in order to secure such exemption shall be punishable as in the case of perjury.

SOURCES: Codes, 1942, § 9681; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 61, eff from and after June 1, 1944.

Cross References — Local privilege tax, see § 27-17-491.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-15-239. Disposition of monies collected; privilege tax record to be kept.

Each officer authorized to issue privilege licenses shall keep a privilege tax register in such form as the state auditor of public accounts shall prescribe in which shall be entered the names of all privilege taxpayers, the amount paid, the serial number of the license issued, the period covered by such license, and the business location. This register shall constitute a permanent record of the officer authorized to collect privilege taxes and shall always be open for inspection by the public. At the end of the year, each such officer shall return to the state auditor of public accounts all unused privilege tax license blanks and three (3) years after the return of such unused privilege tax license blanks, the state auditor of public accounts shall destroy the same. All monies received by the officer authorized by law to issue privilege tax licenses shall be deposited in the state treasury on the same day in which such funds are collected. At the end of each month, the state auditor of public accounts shall carefully check the books and records of the state tax commission and of the commissioner of insurance and of the seafood commission, and shall verify the amounts paid or to be paid into the state treasury insofar as it relates to the collection of privilege taxes; and any duty herein required to the state auditor of public accounts may be performed by his designee for that purpose.

SOURCES: Codes, 1942, § 9685; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 64; Laws, 1984, ch. 478, § 9, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch 478, § 3, effective from and after July 1, 1984, provides that, for purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

Laws of 1984, ch 478, § 35, effective July 1, 1984, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor," and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that whenever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

Monthly reports of collections, see § 27-15-241.

Local privilege tax, see § 27-17-493.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 107.

§ 27-15-241. Monthly report.

The privilege taxes paid to the officer collecting same shall be paid into the state treasury by him on the same day in which said funds are collected by said officer, and shall be reported by him monthly, except as otherwise provided by law. Each such officer shall, within twenty (20) days after the end of each month, make to the state auditor of public accounts a detailed report of the licenses issued by him during the preceding month, showing the number and date of each license, and name the licensee, the business for which it was issued, and the amount collected for it, upon such forms as shall be provided by the state auditor of public accounts. At the same time each such officer shall furnish to the state tax commission a copy of the report herein required. The officer failing to make this report shall be reported by the state auditor of public accounts to the Governor as a defaulter, and a failure by the state auditor of public accounts to so report him to the Governor shall render the state auditor of public accounts liable on his bond on the sureties of the officers for all amounts they may be required to pay because of such default. The account of the state auditor of public accounts against the officer for licenses shall be so kept as to show by months what licenses charged to him are in his hands at any time. Upon the final settlement of the officer, either annual or at the expiration of his term of office, he shall be credited with all license blanks not issued which have been returned to the state auditor of public accounts, or delivered to his successor in office; and the officer shall be liable on his bond in the sum of One Hundred Dollars ($100.00) for each license blank not so returned or delivered to his successor in office.

SOURCES: Codes, 1942, § 9689; Laws, 1940, ch. 120; Laws, 1944, ch. 138, § 65; Laws, 1984, ch. 478, § 10, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides that, for purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing.

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Cross References — State Tax Commission as meaning Department of Revenue, see § 27-15-3.

Disposition of monies collected, see § 27-15-239.

Local privilege tax, see § 27-17-501.

PENALTIES

SEC.
27-15-251. Penalties.

§ 27-15-251. Penalties.

(1) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in the county jail not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court within the limitations aforesaid; and such fine and imprisonment shall be in addition to any other penalty imposed by any particular section of this chapter. The courts of the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this subsection. And persons failing to pay the privilege taxes imposed by this chapter, and to obtain a license as hereby required, but pursuing the business for which a privilege tax is imposed without procuring such license, may be proceeded against by suit, in addition to being dealt with criminally; and the officer required to collect the tax may seize and sell any property of such person liable for such tax and penalty, in the same manner as he may distrain and sell property of other taxpayers delinquent for the payment of ad valorem taxes due on personal property.

(2) It shall be unlawful for any person to engage in buying cotton, cotton seed, corn, grain or field seed of any kind, pecans, peanuts, or other nuts

between the hours of 6:00 P.M. and 7:00 A.M. and any person convicted under this section shall be fined not less than One Hundred Dollars ($100.00) or imprisoned in the county jail for not less than ninety (90) days or both.

SOURCES: Codes, 1942, §§ 9685, 9690; Laws, 1940, ch. 120; Laws, 1944, ch. 138, §§ 16, 66; Laws, 1958, ch. 562, § 5, eff July 1, 1958.

Cross References — Local privilege tax, see § 27-17-521.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Suit to collect the privilege tax imposed upon the operation of a pipeline may be brought when, but not before, the amount of the tax due has been ascertained by the state tax commissioner by the method prescribed by statute. Craig v. Southern Natural Gas Co., 193 Miss. 76, 8 So. 2d 230 (1942).

RESEARCH REFERENCES

ALR. Debts arising from tax penalties as exceptions to bankruptcy discharge under § 523(a)(7)(A) and (B) of Bankruptcy Code of 1978 (11 U.S.C.S. § 523(a)(7)(A) and (B)). 157 A.L.R. Fed. 313.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 74 et seq.

CJS. 53 C.J.S., Licenses § 121 et seq.

CHAPTER 17

Local Privilege Taxes

General Provisions 27-17-1
General Administrative Provisions Applicable to Chapter 27-17-451
Penalties 27-17-521

GENERAL PROVISIONS

Sec.
27-17-1. Citation of chapter.
27-17-3. Definitions.
27-17-5. Applicability and effect of chapter.
27-17-7. Repealed.
27-17-9. Privilege taxes imposed; amount of such taxes.
27-17-11 through 27-17-33. Repealed.
27-17-35. Automobiles for hire or rent.
27-17-37 through 27-17-59. Repealed.
27-17-61. Repealed.
27-17-63 through 27-17-161. Repealed.
27-17-162. Flea market vendors.
27-17-163 through 27-17-229. Repealed.
27-17-230. Liability of owners of coin-operated laundries for tax imposed under local privilege tax law.
27-17-231 through 27-17-297. Repealed.
27-17-299. Pawn brokers.
27-17-301 through 27-17-363. Repealed.
27-17-365. Stores.
27-17-367 through 27-17-389. Repealed.
27-17-390. Repealed.
27-17-391. Repealed.
27-17-392. Repealed.
27-17-393 through 27-17-413. Repealed.
27-17-415. Weapons, dealers in deadly.
27-17-417 through 27-17-421. Repealed.
27-17-423. Local privilege tax on drilling rigs.
27-17-425. Annual privilege tax imposed on optometrist certified to use diagnostic pharmaceutical agents.
27-17-450. Repealed.

§ 27-17-1. Citation of chapter.

This chapter may be cited as the "Local Privilege Tax Law."

SOURCES: Codes, 1942, § 9696-01; Laws, 1944, ch. 137, § 1, eff from and after June 1, 1944.

JUDICIAL DECISIONS

1. In general.

Where a company was engaged in the business of commercial advertising, and had no office or place of business in Rankin County and all its business activities under contract with a telephone company operating throughout the state were carried on from its office in Hinds County, the company was not subject to a privilege tax in Rankin County. Bailey v. Berry, 220 Miss. 395, 71 So. 2d 181 (1954).

Ordinance, which adopted and levied all municipal privilege taxes authorized by the laws of the State of Mississippi sufficiently adopted the local privilege tax cut, even though it did not expressly refer to them. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

Statute which provides that every lawful tax of municipality is a debt due by a person or corporation and may be recovered by action, applies to municipal privilege tax. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

Where successor corporation agreed to assume the liabilities and obligations of the predecessor corporation which were due from the state, the successor corporation was liable for municipal privilege taxes in view of the statute providing for withdrawal of foreign corporation from the state and also in view of statute providing that a tax is a debt due by corporation which may be recovered by action. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

Conflicts between the provisions of this act and the state-wide privilege tax act (Laws 1944, chapter 138) are controlled by the latter, it being the later enactment. Craig v. Dun & Bradstreet, 202 Miss. 207, 30 So. 2d 798 (1947).

ATTORNEY GENERAL OPINIONS

Transient vendors, who rent a convention or banquet room in the city for one or two days, are engaging in business from a place of business as defined in Section 27-17-3 would be required to obtain a privilege license under Section 27-17-1 et seq. Ryan, May 3, 1995, A.G. Op. #95-0079.

While Section 21-17-1 authorizes a municipality to acquire property for municipal buildings, this statute does not authorize a municipality to acquire a building for the purpose of conveying it to an industrial prospect as contemplated by Sections 57-1-19 et seq. and 57-1-301 et seq. Creekmore, December 20, 1996, A.G. Op. #96-0660.

A municipality must comply with the requirements of this section to dispose of property which has ceased to be used for municipal purposes, including the requirements of advertising and accepting competitive bids and may not lease property for less than fair market value to a corporation for a business or profit-making purpose. Ellis, November 7, 1997, A.G. Op. #97-0636.

If the governing authorities do not lease municipal property pursuant to competitive bids, consideration for the purchase, conveyance or lease of the property cannot be given until it is resolved through a factual finding that the use of the property will be to promote and foster the development and improvement of the community; if local industry now leasing municipal property will be constructing a building on additional land that will then become the property of the municipality, the appraised value of the building may be accepted toward the consideration for the lease of the added property; it would also be necessary to employ three professional appraisers to establish the revised rental. Snowden, March 27, 1998, A.G. Op. #98-0108.

RESEARCH REFERENCES

ALR. Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery. 80 A.L.R.2d 1040.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 35, 12, 13 et seq.

CJS. 53 C.J.S., Licenses §§ 50, 52.

§ 27-17-3. Definitions.

As used in this chapter:

The terms "year" and "annually" mean either the calendar year or a period of twelve (12) calendar months.

The term "business" includes all activities or acts, personal, professional or corporate, engaged in or caused to be engaged in with the object of gain, profit, benefit or advantage, either direct or indirect, or following or engaging in any trade, calling or profession, and all things which occupy the time, attention and labor of individuals for the purpose of a livelihood or profit.

The term "place of business" means a store, shop, counting room, office, factory, or other location or locations, whether in a building, enclosed space or in any undefined place or places where any business as herein defined is done, conducted or carried on.

The term "manufacturer" means a business at which there are conducted activities of an industrial or commercial nature wherein labor or skill is applied, by hand or machinery, to materials belonging to the manufacturer so that a new, different or more useful article of tangible personal property or substance of trade or commerce is produced for sale or rental, and includes the production or fabrication of special-made or custom-made articles for sale or rental.

The term "taxpayer" means any person liable for any tax hereunder, in addition to the usual meaning of such word.

The term "officer collecting the tax" means the tax collector of the county, or in the case of municipalities the person who collects the taxes for the municipality, regardless by whatever title he may be known.

The term "employee" means full-time employees and, with respect to a professional firm or clinic, also includes all partners, however, such term excludes seasonal employees. The term "full-time" means at least thirty (30) hours per seven-day week.

SOURCES: Codes, 1942, § 9696-01; Laws, 1944, ch. 137, § 1; Laws, 1988, ch. 505, § 1, eff from and after July 1, 1988.

JUDICIAL DECISIONS

1. In general.

"Officer" to whom reference is made in Code 1942, § 9696-226 is the "officer collecting the tax" defined by this section to be "the person who collects the taxes for the municipality," and municipal tax collector has exclusive power to sue for past due privilege taxes. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

Particular, specific and special provisions of "Local Privilege Tax Law of 1944" supplant generic powers granted to the state tax collector by Code 1942, § 9179, because they have been expressly and exclusively conferred on municipal tax authorities in relation to matter of municipal privilege taxes. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

State tax collector has no power to assess taxpayers for privilege taxes under "The Local Privilege Tax Law of 1944," and any attempt by him to do so is illegal and of no effect. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

ATTORNEY GENERAL OPINIONS

Purpose of local business taxes is to increase revenue, not to enforce municipal ordinances or state criminal statutes. Lewis, May 9, 1991, A.G. Op. #91-0334.

Vendor who operates less than six months of year, but who is exempt from obtaining transient vendor's license must obtain privilege license if engaging in any business from place of business as defined in Miss. Code Section 27-17-3. Duckworth, Apr. 21, 1993, A.G. Op. #93-0257.

Transient vendors, who rent a convention or banquet room in the city for one or two days, are engaging in business from a place of business as defined in Section 27-17-3 would be required to obtain a privilege license under Section 27-17-1 et seq. Ryan, May 3, 1995, A.G. Op. #95-0079.

The owner of a package liquor store is not required to obtain a local privilege license, but is required to obtain a state license; since a privilege tax is imposed on any business, defined as activities having the object of gain, profit, or advantage, or any trade, calling, profession and things occupying the time, attention and labor of individuals for the purpose of livelihood, the owner of a nursing/personal care home operated for profit would be required to obtain a license. Richardson, January 9, 1998, A.G. Op. #98-0774.

Whether the renting of one or more houses constitutes a business is a factual determination to be made on a case-by-case basis; however, the incidental letting of one's house does not necessarily constitute a business activity contemplated by the privilege license and tax laws. Cole, Oct. 26, 2001, A.G. Op. #01-0659.

Whether a particular rental arrangement constitutes a business for the purpose of obtaining a privilege license is ultimately a question of fact to be determined by the Mayor and Board of Aldermen of the City on a case by case basis. Campbell, Mar. 25, 2005, A.G. Op. 05-0102.

§ 27-17-5. Applicability and effect of chapter.

(1) All privilege taxes levied and imposed by this chapter shall be paid in addition to any and all other taxes, and the provisions of this chapter shall not affect the operation of any other sections of the Mississippi Code of 1972 or other laws providing for the imposition, levy and collection of privilege taxes, nor shall the provisions of this chapter affect the operation of the sales tax law, nor shall the provisions of this chapter in anywise affect any law imposing a tax or fee or penalty, including filing fees, the fire marshal's fee, penalties or fees or charges imposed and collected by the Commissioner of Insurance as now provided, or may be hereafter provided, by the laws of Mississippi.

(2) The board of supervisors of each county and the governing body of each municipality shall levy, assess and collect all taxes upon the privilege of doing business as specified in this chapter.

(3) The duty of the board of supervisors of each county and of the governing board of each municipality to levy, assess and collect taxes as required by subsection (2) of this section shall be mandatory. The privilege taxes collected on businesses outside of municipalities shall be for the benefit of counties, and the privilege taxes collected on businesses within a municipality shall be for the benefit of the municipality.

SOURCES: Codes, 1942, §§ 9696-209, 9696-229, 9696-231, 9696-234, 9696-235; Laws, 1944, ch. 137, §§ 205, 225, 227, 230, 231; Laws, 1952, ch. 419, § 1; Laws, 1988, ch. 505, § 2, eff from and after July 1, 1988.

Cross References — Corporation franchise tax, see § 27-13-1 et seq.
Applicability and effect of the statewide privilege tax law, see § 27-15-5.
Alcoholic beverage taxes, see § 27-17-1 et seq.
Motor vehicle privilege taxes, see § 27-19-1 et seq.
Finance company privilege taxes, see § 27-21-1 et seq.
Severance taxes, see § 27-25-1 et seq.
Vending and amusement machine taxes, see § 27-27-1 et seq.
Liquefied compressed gas tax, see § 27-59-1 et seq.
Sales tax, see § 27-65-1 et seq.
Use or compensating taxes, see § 27-67-1 et seq.
Tobacco tax, see § 27-69-1 et seq.
Taxes on light wines and beer, see § 27-71-301 et seq.
Taxes for defraying expenses of state fire marshal, see §§ 45-11-5, 83-31-45.
Small loan privilege tax, see § 75-67-101 et seq.
Taxation of credit unions, see § 81-13-63.
Privilege tax on burial associations, see § 83-37-21.

JUDICIAL DECISIONS

1. In general.

Ordinance, which adopted and levied all municipal privilege taxes authorized by the laws of the State of Mississippi sufficiently adopted the local privilege tax cut, even though it did not expressly refer to them. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

ATTORNEY GENERAL OPINIONS

Privilege tax of $250 assessed upon each pawn broker, with an additional tax of $250 upon each broker receiving in pawn any dirk, knife, sword-cane, brass or metal knucks or pistol, does not apply to title pledge lenders licensed under the Mississippi Title Pledge Act. Skinner, March 27, 1998, A.G. Op. #98-0173

Each pawn broker must pay $ 250.00. Each pawn broker who receives in pawn weapons listed in § 27-17-299 must pay an additional $ 250.00. A pawnbroker who also buys weapons listed in this section at wholesale for the purpose of retail sales of such weapons, must pay the additional fee of $ 100.00. A pawnbroker who sells a weapon that was not claimed by the owner did not purchase that weapon at wholesale, and should not be charged the $ 100.00 fee provided by this section. McRae, July 16, 2004, A.G. Op. 04-0317.

§ 27-17-7. Repealed.

Repealed by Laws, 1988, ch. 505, § 11, eff from and after July 1, 1988.
[Codes 1942, § 9696-02; Laws, 1944, ch. 137, § 2]

Editor's Note — Former § 27-17-7 related to the classification of municipalities for purposes of this chapter.

§ 27-17-9. Privilege taxes imposed; amount of such taxes.

(1) Every person desiring to engage in any business, or exercise any privilege hereinafter specified, if such business is located outside a municipal-

ity, shall first, before commencing the same, apply for, pay for and procure from the tax collector of the county in which such business is located, or if such business is located within a municipality, shall apply for, pay for and procure from the tax collector of the municipality, a privilege license authorizing him to engage in the business or exercise the privileges specified therein, and the amount of tax shown in subsection (2) of this section, except as otherwise specifically established in this chapter, is hereby imposed for the privilege of engaging or continuing in the business set out therein.

(2)(a) The amount of a privilege license shall be Twenty Dollars ($20.00) annually for a business having three (3) or fewer employees.

(b) The amount of a privilege license shall be Thirty Dollars ($30.00) annually for a business having more than three (3) but fewer than eleven (11) employees.

(c) The amount of a privilege license shall be Thirty Dollars ($30.00) annually plus an additional assessment of Three Dollars ($3.00) for each employee over ten (10) employees, not to exceed a maximum payment of One Hundred Fifty Dollars ($150.00), for a business (other than a manufacturer) having eleven (11) or more employees.

(d) The amount of a privilege license shall be Eighty Dollars ($80.00) annually for a manufacturer having eleven (11) or more employees; manufacturers having ten (10) or fewer employees shall pay an annual privilege license pursuant to paragraph (a) or (b) of this subsection (2), whichever is applicable.

(3) This section shall not apply to an out-of-state business or out-of-state employee to the extent provided for in Sections 27-113-1 through 27-113-9.

SOURCES: Codes, 1942, § 9696-03; Laws, 1944, ch. 137, § 3; Laws, 1964, ch. 516, § 1; Laws, 1988, ch. 505, § 3; Laws, 2015, ch. 420, § 10, eff from and after passage (approved Mar. 29, 2015.)

Cross References — Power of certain municipalities to impose tax on businesses within a parking and business improvement area, see § 21-43-1 et seq.

Statewide privilege tax, see § 27-15-11.

Liability of owners of coin-operated laundries for tax imposed under local privilege tax law, see § 27-17-230.

Refund of taxes, generally, see § 27-73-1 et seq.

Dealer engaged in business of purchasing precious items for resale required to purchase privilege license under this section, see § 75-95-3.

JUDICIAL DECISIONS

1. In general.

Isolated transactions do not constitute engaging in business. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

The tax imposed is highly penal. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

This section requires that the privilege license be obtained and the privilege tax paid before commencing business. Winter v. Nash, 245 Miss. 246, 147 So. 2d 507 (1962).

State tax collector has no power to assess taxpayers for privilege taxes under "The Local Privilege Tax Law of 1944," and any attempt by him to do so is illegal and of no effect. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

ATTORNEY GENERAL OPINIONS

Vending machine tax applies to coin operated laundry machines; although owner is required to pay local privilege tax, "not otherwise taxed" exception does not apply when other tax is general local privilege tax. Valentine, Jan. 24, 1990, A.G. Op. #90-0027.

If the poultry processor operates as a single corporation with several stages of the production process at different locations in the city, the corporation should pay one privilege tax to the city tax collector as a manufacturer. Hollingshead, Nov. 6, 1991, A.G. Op. #91-0808.

A corporation which is a manufacture with several stages of the production process at different locations in the city should pay one privilege tax as a manufacturer; similarly, a single corporation which consists of several divisions or manufacturing locations at which different products are manufactured should pay one privilege tax. Shackelford, Nov. 20, 1991, A.G. Op. #91-0877.

Owner of coin-operated car wash must pay privilege tax based on number of employees. Stokes, April 1, 1992, A.G. Op. #92-0117.

Miss. Code Section 27-17-9 imposes privilege tax on every person engaging in any business to be paid to county or municipality where business is located. Duckworth, Apr. 21, 1993, A.G. Op. #93-0257.

If a vendor at a flea market is doing business for more than six months of the year, the vendor must obtain a privilege license pursuant to Section 27-17-9. Johnson, November 8, 1996, A.G. Op. #96-0667.

The owner of a package liquor store is not required to obtain a local privilege license, but is required to obtain a state license; since a privilege tax is imposed on any business, defined as activities having the object of gain, profit, or advantage, or any trade, calling, profession and things occupying the time, attention and labor of individuals for the purpose of livelihood, the owner of a nursing/personal care home operated for profit would be required to obtain a license. Richardson, January 9, 1998, A.G. Op. #98-0774.

Hospitals which are for profit are subject to privilege taxes based upon the number of employees under the statute. Exum-Petty, June 5, 1998, A.G. Op. #98-0323.

A city tax collector should collect a privilege tax from a company which operates a natural gas terminal in the city pursuant to the statute, which imposes a tax on every person engaging in any business, based upon the number of employees. Sanford, August 7, 1998, A.G. Op. #98-0379.

A business could be classified as a manufacturer, rather than a store, for the purposes of imposing a privilege tax where the business processed catfish feed and sold it to anyone who wanted to buy it, the business had 12 employees and maintained a constant inventory of finished ready-to-sell catfish feed, all of the catfish feed produced was produced and sold at this location, and the company had no fish of its own and was not in the fish farming business. Frasier, Nov. 12, 1999, A.G. Op. #99-0605.

The general rule is that the taxes imposed by Section 27-27-301 on vending machines or by Section 27-27-5 on amusement machines are to be collected in addition to any privilege tax paid pursuant to Section 27-17-9 by the business where such machines are located; however, exceptions to this rule are provided by Sections 27-27-305 and 27-27-11. Follis, Apr. 29, 2003, A.G. Op. 03-0185.

Persons engaged in the business of selling cosmetics are required to obtain a local privilege tax license. Baum, Nov. 29, 2004, A.G. Op. 04-0553.

RESEARCH REFERENCES

ALR. Failure to obtain occupational or business license or permit as defense to tort action. 13 A.L.R.2d 157.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 11, 21, 23, 31, 46.

58 Am. Jur. 2d, Occupations, Trades, and Professions §§ 10, 54, 72, 78.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 1-5.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 11-15.

CJS. 53 C.J.S., Licenses §§ 46-49.

§§ 27-17-11 through 27-17-33. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, effective from and after July 1, 1988.

§§ 27-17-11 through 27-17-27. [Codes, 1942, §§ 9696-04 to 9696-12; Laws, 1940, ch. 120; Laws, 1944, ch. 137, §§ 4-12]

§§ 27-17-29 through 27-17-33. [Codes, 1942, § 9696-13 to 9696-15; Laws 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, §§ 13-15]

Editor's Note — Former §§ 27-17-11 through 27-17-27 provided for local privilege taxes on businesses such as abstracting land title companies, trust companies, advertising agencies, motion pictured, air conditioning plants, amusement parks, antique dealers, architects and auctioneers.

Former §§ 27-17-29 through 27-17-33 provided for local privilege taxes on businesses such as automobile dealers, retailers of automotive accessories, and automobile repair shops.

§ 27-17-35. Automobiles for hire or rent.

Upon each person operating a taxicab, U-drive-it, or other forms of renting motor vehicles (for the transportation of persons for hire), whether driven by the person renting same, or by driver furnished by the person operating the station, for each automobile so operated, as follows:

In municipalities of class 1	$15.00
In municipalities of class 2	$10.00
In municipalities of classes 3, 4, 5, 6, 7, and elsewhere in the county	$5.00

SOURCES: Codes, 1942, § 9696-16; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 16, eff from and after June 1, 1944.

Cross References — Requirement of municipal permit for motor vehicles for hire, see § 21-27-131.

Privilege tax on taxicabs, see § 27-19-9.

ATTORNEY GENERAL OPINIONS

Section 27-17-35 is not applicable to a company such as U-Haul, Penske or Ryder, which rents motor vehicles for the transportation of property and not persons. The privilege tax on such companies should be assessed in accordance with Section 27-17-9. Henderson, Mar. 11, 2005, A.G. Op. 05-0109.

RESEARCH REFERENCES

ALR. State regulation of motor vehicle rental ("you-drive") business. 60 A.L.R.4th 784.

§§ 27-17-37 through 27-17-59. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§§ 27-17-37 through 27-17-57. [Codes, 1942, §§ 9696-17 to 9696-27; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, §§ 17-27]

§ 27-17-59. [Codes, 1942, § 9696-28; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 28; Laws, 1946, ch. 299; Laws, 1960, ch. 432; Laws, 1968, ch. 581, § 1]

Editor's Note — Former §§ 27-17-37 through 27-17-57 provided for local privilege taxes on businesses such as wholesale automobile tire dealers, garages, car washes, parking lots, automobile battery stations, distributors of bakery products, bakeries, barber shops, bazaars and festivals and beauty parlors.

Former § 27-17-59 imposed a local privilege tax on persons operating a billiard hall.

§ 27-17-61. Repealed.

Repealed by Laws of 1976, ch. 365, § 2, eff from and after April 22, 1976. [Codes, 1942, § 9696-29; Laws, 1940, ch. 120; 1944, ch. 137, § 29]

Editor's Note — Former § 27-17-61 pertained to the licensing of billiard and tables.

§§ 27-17-63 through 27-17-161. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§ 27-17-63. [Codes, 1942, § 9696-30; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 30]

§ 27-17-65. [Codes, 1942, § 9696-31; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 31; Laws, 1976, ch. 365, § 1]

§§ 27-17-67 through 27-17-141. [Codes, 1942, §§ 9696-32 to 9696-68; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, §§ 32-68; Laws, 1946, ch. 392; Laws, 1948, ch. 455; Laws, 1958, ch. 563]

§§ 27-17-143 through 27-17-161. [Codes, 1942, §§ 9696-68.5 to 9696-77; Laws, 1940, ch. 120; Laws, 1944, ch. 137, §§ 69-77; Laws, 1948, ch. 422; Laws, 1950, ch. 532; Laws, 1952, ch. 412; Laws, 1964, ch. 518; Laws, 1968, ch. 361, § 31]

Editor's Note — Former § 27-17-63 pertained to the operation and prohibition of billiard halls.

Former § 27-17-65 pertained to the prohibition against gambling on billiard games.

Former §§ 27-17-67 through 27-17-141 imposed a local privilege tax on businesses such as bowling alleys, blue print and photostat shops, brick or concrete plants, broom factories, candy factories, sellers of appliances, casket factories, check rooms, cheese plants, circuses, cleaning and pressing shops, second hand clothing dealers, coal dealers, coffee roasting plants, coffin dealers, cold storage plant, collection agencies, credit reporting agency, confectioneries, concrete-curing, cement manufacturing, cotton buyers, oil mills, creameries, creosoting plants, detective agencies, domino parlors, drainage, and drays.

Former §§ 27-17-143 through 27-17-161 imposed a local privilege tax on businesses such as drilling rigs, dry docks, electricians, engineers, manufacturers of pottery, exhibitions, feed mills, toll bridges or ferries, fertilizer factor, and fireworks.

§ 27-17-162. Flea market vendors.

(1) In any county having a total assessed valuation in 1985 of more than Forty-seven Million Four Hundred Thirty-nine Thousand Dollars ($47,439,000.00) but less than Forty-seven Million Four Hundred Forty Thousand Dollars ($47,440,000.00) and a population according to the 1980 federal census of more than eighteen thousand seven hundred (18,700) but less than eighteen thousand seven hundred fifty (18,750), upon each person who is engaging in the business of selling goods at a flea market and who is required to file a state sales tax return on such business, there is hereby levied a tax of Twenty-five Dollars ($25.00) for an annual license. In lieu of paying the annual tax and obtaining an annual license, the vendor may, or before the date of the flea market at which he tenders his goods for sale, pay a tax at the pro rata annual rate based on the proportion that a single flea market bears to the total number of regularly scheduled flea markets to be held during the calendar year in the county or municipality. The tax collector shall issue a temporary license to the vendor upon receipt of the tax at the pro rata annual rate. The temporary license shall be valid for a single flea market held on one (1) day or consecutive days.

(2) The tax collector of each county and municipality having regularly scheduled flea markets in a calendar year shall prescribe the procedure for the issuance of temporary licenses under this section.

SOURCES: Laws, 1987, ch. 476, § 1, eff from and after July 1, 1987.

§§ 27-17-163 through 27-17-229. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§§ 27-17-163 through 27-17-229. [Codes, 1942, §§ 9696-78 to 9696-110; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1942, ch. 119; Laws, 1944, ch. 137, §§ 137-173; Laws, 1946, ch. 364, Laws, 1948, ch. 456, § 2; Laws, 1952, ch. 408, § 2; Laws, 1952, ch. 413; Laws, 1954, ch. 374, § 1; Laws, 1964, ch. 516, § 2; Laws, 1979, ch. 405; Laws, 1982, ch. 394]

Editor's Note — Former §§ 27-17-163 through 27-17-229 imposed local privilege taxes on businesses such as florists, foundries; fur dealers, second hand furniture dealers, fortune tellers, furniture and store fixture factories, furniture repair shops, dealers in futures, gas companies, gas systems, oil dealers, gas and oil leases, garment plants, gravel and sand pits, gypsies, hair dressers, hardwood products, hat cleaners, heading factory, horse and mule dealers and auctioneers, hotels, hot tamale vendors, ice cars, ice cream carts and wagons, ice factories, jewelry and watch repairers, junk, hides and wool dealers, knitting mills, employment agencies, laboratories, and laundries.

§ 27-17-230. Liability of owners of coin-operated laundries for tax imposed under local privilege tax law.

Each person operating a self-service laundry in which the owner or operator furnishes the use of the washing machine or appliance for a specified charge or fee, and commonly called a launderette, washerette or other similar trade name, shall be subject to the tax imposed by Section 27-17-9 of this chapter and shall not be taxable under Section 27-27-301.

SOURCES: Laws, 1991, ch. 456 § 1, eff from and after passage (approved March 29, 1991).

§§ 27-17-231 through 27-17-297. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§§ 27-17-231 through 27-17-297. [Codes, 1942, §§ 9696-111 to 9696-144; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1942, ch. 119; Laws, 1944, ch. 137, §§ 137-173; Laws, 1946, ch. 364, Laws, 1948, ch. 456, § 2; Laws, 1952, ch. 408, § 2; Laws, 1952, ch. 413; Laws, 1954, ch. 374, § 1; Laws, 1964, ch. 516, § 2; Laws, 1979, ch. 405; Laws, 1982, ch. 394]

Editor's Note — Former §§ 27-17-231 through 27-17-297 imposed local privilege taxes on businesses such as laundries, linen rental, lawyers, lightning rod agents, loan brokers, log and stave buyers, lumber dealers, lumber yards, marble dealers, mattress factories, renovators and dealers, meat distributing plants, slaughterhouses, meat markets, merchandise brokers, transient vendors, merry-go-round operators, milk processors, dehydrating plant, casein plants, clay mining, money lenders, motion pictures, motorcycle dealers, nurseries, oil depots, opticians or optometrists, oriental merchandise, oyster dealers, paper and pulp mills, and paper bag factories.

§ 27-17-299. Pawn brokers.

Upon each pawn broker	$250.00
Upon each pawn broker who receives in pawn any dirk, knife, sword-cane, brass or metal knucks or pistol, (additional tax)	$250.00

SOURCES: Codes, 1942, § 9696-145; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 142, eff from and after June 1, 1944.

Cross References — Regulation of personal loans, generally, see § 75-67-1 et seq.
Small loan regulatory law, see § 75-67-101 et seq.
Small loan privilege tax law, see § 75-67-201 et seq.

ATTORNEY GENERAL OPINIONS

A pawn broker who receives shotguns and rifles in pawn, but not dirks, knives, sword-canes, brass knuckles or pistols, should only be charged a fee of $ 250.00. McRae, July 16, 2004, A.G. Op. 04-0317.

Each pawn broker must pay $ 250.00. Each pawn broker who receives in pawn weapons listed in this section must pay an additional $ 250.00. A pawnbroker who also buys weapons listed in § 27-17-415 at wholesale for the purpose of retail sales of such weapons, must pay the additional fee of $ 100.00. A pawnbroker who sells a weapon that was not claimed by the owner did not purchase that weapon at wholesale, and should not be charged the $ 100.00 fee provided by § 27-17-415. McRae, July 16, 2004, A.G. Op. 04-0317.

§§ 27-17-301 through 27-17-363. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§§ 27-17-301 through 27-17-329. [Codes, 1942,§§ 9696-146 to 9696-160; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1942, ch. 119; Laws, 1944, ch. 137, §§ 137-173; Laws, 1946, ch. 364, Laws, 1948, ch. 456, § 2; Laws, 1952, ch. 408, § 2; Laws, 1952, ch. 413; Laws, 1954, ch. 374, § 1; Laws, 1964, ch. 516, § 2; Laws, 1979, ch. 405]

§ 27-17-330. [En, Laws, 1978, ch. 474, § 1]

§ 27-17-331. [Codes, 1942, § 9696-161; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 158]

§ 27-17-332. [En, Laws, 1978, ch. 498, § 1]

§§ 27-17-333 through 27-17-363. [Codes, 1942, §§ 9696-162 to 9696-177; Laws, 1940, ch. 120; Laws, 1944, ch. 137, §§ 92A, 159-172]

Editor's Note — Former §§ 27-17-301 through 27-17-329 imposed local privilege taxes on businesses such as photographers, physicians, dentists, osteopaths, chiropractors, dealers in musical instruments, pickle factories, dealers in firearms, planing mills, plumbers, printers, newspapers, public accountants, radio and television dealers, real estate agents, restaurants, and railroad ticket scalpers.

Former § 27-17-330 dealt with the privilege tax on roadhouses, night clubs and dance halls.

Former § 27-17-331 imposed a tax on royalty and copyright agents.

Former § 27-17-332 dealt with the privilege tax on the selling or renting of road machinery and materials.

Former §§ 27-17-333 through 27-17-363 imposed local privilege taxes on such businesses as manufacturers of rubber and leather goods, and rubber stamps, sash, door and blind factories, saw mills, shingle mills, shipyards, shoe repair shops, shooting galleries, shows, skating rinks and bicycle rinks, soda fountains, soft drink manufacturers, producers, bottlers, distributors, retail and wholesale dealers, bottlers of natural fruit juices, mixed milk drinks, etc., and stave and bolt mills.

§ 27-17-365. Stores.

(1) From October 1, 1984, through September 30, 1985, there shall be levied a tax upon each person operating a wholesale or retail store for the sale of goods, wares and merchandise, in an amount equal to the local privilege tax levied upon such person for the preceding year; however, any person acquiring a license under this section for the first time, prior to October 1, 1985, shall pay the tax at such time in accordance with subsection (2) of this section. Any person who, between October 1, 1984, and April 3, 1985, paid a tax levied under this section in excess of the tax prescribed in this subsection shall be entitled to a refund of all such excess taxes paid. Refunds shall be made by the tax collector at the request of the taxpayer upon a showing of proof of overpayment of taxes.

(2) Beginning October 1, 1985, and thereafter, there shall be levied a tax upon each person operating a wholesale or retail store for the sale of goods, wares and merchandise, as follows:

Where the value of stock never exceeds $7,000.00	$20.00
Where the value of stock sometimes exceeds $7,000.00, but never exceeds $10,000.00	$25.00
Where the value of stock sometimes exceeds $10,000.00, but never exceeds $12,000.00	$32.50
Where the value of stock sometimes exceeds $12,000.00, but never exceeds $15,000.00	$40.00
Where the value of stock sometimes exceeds $15,000.00, but never exceeds $20,000.00	$50.00
Where the value of stock sometimes exceeds $20,000.00, but never exceeds $25,000.00	$62.50
Where the value of stock sometimes exceeds $25,000.00, but never exceeds $30,000.00	$75.00
Where the value of stock sometimes exceeds $30,000.00, but never exceeds $40,000.00	$92.50
Where the value of stock sometimes exceeds $40,000.00, but never exceeds $50,000.00	$150.00
Where the value of stock sometimes exceeds $50,000.00, but never exceeds $60,000.00	$200.00
Where the value of stock sometimes exceeds $60,000.00, but never exceeds $70,000.00	$250.00
Where the value of stock sometimes exceeds $70,000.00, but never exceeds $80,000.00	$300.00
Where the value of stock sometimes exceeds $80,000.00, but never exceeds $90,000.00	$340.00
Where the value of stock sometimes exceeds $90,000.00, but never exceeds $100,000.00	$380.00
Where the value of stock sometimes exceeds $100,000.00, but never exceeds $125,000.00	$440.00
Where the value of stock sometimes exceeds $125,000.00, but never exceeds $150,000.00	$560.00
Where the value of stock sometimes exceeds $150,000.00, but never exceeds $175,000.00	$680.00
Where the value of stock sometimes exceeds $175,000.00, but never exceeds $200,000.00	$800.00
Where the value of stock sometimes exceeds $200,000.00, but never exceeds $225,000.00	$920.00
Where the value of stock sometimes exceeds $225,000.00, but never exceeds $250,000.00	$1,040.00
Where the value of stock sometimes exceeds $250,000.00, but never exceeds $300,000.00	$1,200.00
Where the value of stock sometimes exceeds $300,000.00, but never exceeds $350,000.00	$1,360.00

Where the value of stock sometimes exceeds $350,000.00, but never exceeds $400,000.00 ....$1,520.00
Where the value of stock sometimes exceeds $400,000.00, but never exceeds $450,000.00 ....$1,680.00
Where the value of stock sometimes exceeds $450,000.00 ....$1,840.00

In computing this tax the value of the stock shall be taken at its assessed value as determined for ad valorem taxation, and shall include goods held on consignment.

(3) A store shall be a place of business operated by a person dealing in goods, wares and merchandise and located in a permanent building, and if such person does not own the building he shall have a lease, or contract, under the terms of which he is given the right of occupancy for a period of not less than ninety (90) days.

(4) This section shall apply to cooperative associations selling merchandise for a profit.

(5) The issuance of a license herein provided shall be restricted to a person who maintains a store as defined in this section, open at reasonable hours, for sale to the public of such goods, wares or merchandise as may be handled. The application for the license required by this chapter shall state that the conditions imposed by this section will be complied with.

(6) A license issued under the provisions of this section shall be revoked by the officer issuing it, if an investigation by him or at his instance, or on the complaint of any citizen of this state, that the conditions imposed by this section have not been, or, are not being complied with.

SOURCES: Codes, 1942, § 9696-178; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, § 174; Laws, 1985, ch. 463, § 1; Laws, 1988, ch. 505, § 4, eff from and after July 1, 1988.

ATTORNEY GENERAL OPINIONS

City or county tax collector in computing privilege tax imposed on stores should take value of stock at its assessed value as determined for ad valorem taxation, which is 15 percent of true value for personal property. Dyson, Oct. 31, 1990, A.G. Op. #90-0804.

A poultry processor, a business which produces fresh or frozen chicken or chicken products for marketing and delivery to wholesale or retail customers, is a manufacturer, that is, a business which converts materials from one form to a new, different or more useful substance of trade or commerce; therefore the statute which imposes a tax on wholesale or retail stores which are not manufacturers, is not applicable to a poultry processor. Hollingshead, Nov. 6, 1991, A.G. Op. #91-0808.

A business could be classified as a manufacturer, rather than a store, for the purposes of imposing a privilege tax where the business processed catfish feed and sold it to anyone who wanted to buy it, the business had 12 employees and maintained a constant inventory of finished ready-to-sell catfish feed, all of the catfish feed produced was produced and sold at this location, and the company had no fish of its own and was not in the fish farming business. Frasier, Nov. 12, 1999, A.G. Op. #99-0605.

If a pawn shop sells inventory other than guns, then a tax imposed by Section 27-17-365 should be imposed in addition to the $ 100 tax set forth in Section 27-17-415; however, if the sole inventory of the gun shop consists of weapons, then this business should be charged only under Section 27-17-415. Scott, Oct. 19, 2001, A.G. Op. #01-0666.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 50, 52.

§§ 27-17-367 through 27-17-389. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988 [Section was also repealed by Laws, 1988, ch. 581, § 12]

§ 27-17-367. [Codes, 1942, § 9696-179; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 175]

§§ 27-17-369 through 27-17-389. [Codes, 1942, §§ 9696-180 9696-189; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, §§ 176-185; Laws, 1958, ch. 591]

Editor's Note — Former § 27-17-367 imposed a local privilege tax on transient dealers in stoves, ranges, and clocks.

Former §§ 27-17-369 through 27-17-389 imposed a local privilege tax on businesses such as street fairs, manufacturers of syrup, tattooing, tent and awning makers, title guaranty companies, tourist camps and trailer parks, trading or supply cars, trading stamps, and tin and sheet metal shops.

§ 27-17-390. Repealed.

Repealed by Laws of 1988, ch. 581, § 12, eff from and after October 1, 1988.

[En, Laws, 1978, ch. 549, § 1; Laws, 1979, ch. 422]

Editor's Note — Former § 27-17-390 imposed a privilege tax upon transient dealers and vendors.

§ 27-17-391. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

[Codes, 1942, § 9696-190; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, § 186]

Editor's Note — Former § 27-17-391 imposed a privilege tax on persons engaged in the business of operating a general agency for the sale of farm equipment.

§ 27-17-392. Repealed.

Repealed by Laws of 1998, ch. 467, § 1, eff from and after July 1, 1998.

[Laws, 1978, ch. 474, § 2]

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, directed the publisher at its meeting on May 20, 1998, to execute the repeal by Laws of 1998, ch. 467, in this section in accordance with the title of the act.

Editor's Note — Former Section 27-17-392 related to tax levies on travel agencies, other travel organizations and their agents or representatives.

The title of the act and Section 1 in Laws of 1998, ch. 467, eff from and after July 1, 1998, provide:

"AN ACT TO REPEAL SECTION 27-17-392, MISSISSIPPI CODE OF 1972, WHICH LEVIES A PRIVILEGE TAX UPON EACH PERSON OPERATING AS A TRAVEL AGENCY OR TRAVEL ORGANIZATION AND UPON EACH PERSON ACTING AS AN AGENT OR REPRESENTATIVE OF ANY TRAVEL AGENCY OR OTHER TRAVEL ORGANIZATION."

"SECTION 1. Section 27-17-392, Mississippi Code of 1972, which levies a privilege tax upon each person operating as a travel agency or travel organization and upon each person acting as an agent or representative of any travel agency or other travel organization, is hereby repealed."

§§ 27-17-393 through 27-17-413. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§§ 27-17-393 through 27-17-413. [Codes, 1942, §§ 9696-191 to 9696-201; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, §§ 187-197]

Editor's Note — Former §§ 27-17-393 through 27-17-413 imposed a privilege tax on various businesses such as turpentine distillery, undertakers, vegetable brokers, veneer factory, veterinary surgeons, vulcanizing, sale of mineral water, wagon factory, wall board plants, storage warehouses, and water works.

§ 27-17-415. Weapons, dealers in deadly.

Upon each person selling pistols, dirk knives, sword canes, brass or metallic knuckles, or other deadly weapons (excepting hunting knives, shot guns and rifles) $100.00

SOURCES: Codes, 1942, § 9696-202; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 198, eff from and after June 1, 1944.

ATTORNEY GENERAL OPINIONS

If a pawn shop sells inventory other than guns, then a tax imposed by Section 27-17-365 should be imposed in addition to the $100 tax set forth in Section 27-17-415; however, if the sole inventory of the gun shop consists of weapons, then this business should be charged only under Section 27-17-415. Scott, Oct. 19, 2001, A.G. Op. #01-0666.

§§ 27-17-417 through 27-17-421. Repealed.

Repealed by Laws of 1988, ch. 505, § 11, eff from and after July 1, 1988.

§§ 27-17-417 through 27-17-421. [Codes, 1942, §§ 9696-202 to 9696-205; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, §§ 198-201]

Editor's Note — Former §§ 27-17-417 through 27-17-421 imposed a privilege tax on businesses such as welding shops, wood working plants, and wood yards.

§ 27-17-423. Local privilege tax on drilling rigs.

(1) Wherever the words "drilling rig" are used in this section the same shall be construed to mean the machinery, equipment, tools and appliances usual and necessary in the drilling of wells in exploring for, attempting to obtain and obtaining production of oil, gas, sulphur, salt or any other minerals, but limited to the following:

(a) Derricks or masts and subbases.

(b) Draw works, rotary table, crown and traveling blocks, swivel hooks, Kelly joints, drive bushing, elevators and blow out equipment.

(c) Drill stem and accessories and drill bits.

(d) Engines, gas, butane, steam, diesel and their subbases.

(e) Electric generators and motors and equipment.

(f) Drives and controls and indicators.

(g) Boilers and boiler feed equipment.

(h) Tanks.

(i) Pumps and mud equipment.

(j) Rig houses.

(k) Coring and swabbing equipment.

(*l*) Tools and lumber actively in use with the rig.

(m) Similar machinery, equipment and tools used in lieu of any listed above or forming an integral part thereof.

Each of the enumerated items making up the "drilling rig" shall be identified by disclosing the manufacturer's name, model and serial number when available.

(2) Every owner or operator of a drilling rig or drilling rigs used, or which may be used, for the purpose of exploring for, attempting to obtain or obtaining production of oil, gas, sulphur, salt or any other minerals in this state shall first apply for and procure from the tax collector of the county in which such rig is to be operated a privilege license authorizing him to operate such drilling rig in the State of Mississippi, and the amount of tax hereinafter set forth is hereby imposed for the privilege of operating such drilling rig. A license shall be obtained by such operator for each well drilled prior to the drilling thereof; the amount of the license fee for each well shall be based upon the schedule hereinafter set forth applied to the total depth for which a permit is obtained from the State Oil and Gas Board.

(3) Upon each person, firm or corporation owning or operating a drilling rig for the purpose of exploring for, attempting to obtain or obtaining production of oil, gas, sulphur, salt or any other minerals, there is hereby levied a privilege tax for the use of each drilling rig and for each well drilled by said rig as follows:

(a) Upon a well drilled to a total depth not exceeding seven thousand (7,000) feet — One and One One-hundredths Cents (1.01¢) per foot for each foot to be drilled.

(b) Upon every well drilled to a total depth exceeding seven thousand (7,000) feet — Four and Twenty-one One-hundredths Cents (4.21¢) per foot for each foot to be drilled.

Payment shall be made upon the total depth of the well drilled, regardless of whether production is obtained from the well or not and regardless of whether production is obtained from a higher stratum or not.

If any person, firm or corporation shall pay the privilege tax hereon on as many as eight (8) wells drilled to a depth of not exceeding seven thousand (7,000) feet in any one (1) calendar year, then no additional privilege taxes shall be assessed or collected against such drilling rig for the calendar year for which such tax is paid regardless of how many additional wells should be drilled.

In the event any person, firm or corporation shall pay the privilege tax hereon on as many as four (4) wells drilled to a depth exceeding seven thousand (7,000) feet in any one (1) calendar year, then no additional privilege taxes shall be assessed or collected against such drilling rig for the calendar year for which such tax is paid, regardless of how many additional wells should be drilled during such calendar year.

In order for any person, firm or corporation to secure the exemption from additional taxes as provided in this subsection, such person, firm or corporation shall obtain statements in writing from the State Oil and Gas Board that such person, firm or corporation has drilled as many as eight (8) wells of not exceeding seven thousand (7,000) feet within the calendar year or has drilled as many as four (4) wells to a depth exceeding seven thousand (7,000) feet within the calendar year, and that the drilling rig is therefore entitled to the exemption from further additional tax as provided in this subsection.

(4) The privilege license shall identify the drilling rig upon which it is issued, and there shall be attached to such license an inventory of the rig. The license shall identify the location of the well for the drilling on which the license was issued. The person utilizing such rig shall keep such license with the rig for the purpose of exhibiting it at any time.

(5) The license issued shall not authorize the person to whom issued to operate any drilling rig other than the rig upon which it is issued and which is described therein. Such license shall be good, valid and usable for the drilling rig to which it is applicable as the same may be maintained and repaired or portions thereof replaced or renewed during the period for which it is issued, regardless of any changes of ownership thereof. The date of any parties to any changes of ownership thereof shall be noted upon the back of the original license issued to the taxpayer and signed by the original taxpayer or the purchaser, and such notation shall operate as a transfer of the privilege license as to the use of such drilling rig.

(6) The tax hereby imposed is levied upon drilling, owning or operating a drilling rig in the State of Mississippi, and there is hereby affixed a lien upon the drilling rig for the payment of the privilege tax; and upon the failure to pay such tax, the tax collector of the county may proceed to enforce the lien for the payment of the tax. If the tax is not paid within a period of twenty (20) days after the completion of the well there is hereby imposed a penalty of fifty percent (50%) of the tax due, which amount shall be collected in the same

manner as the tax is collected. The sheriff is hereby authorized to levy upon and seize any property of the person, firm, corporation or association from whom such tax is due, including choses in action or any other form of indebtedness to which the remedies might apply. The sheriff shall be entitled to the same fees for his services in executing such seizure as are now allowed by law for service of warrants, to be collected in the same manner as now provided by law for like service.

(7) The State Tax Commission and the State Oil and Gas Board shall furnish to the tax collector all information available to them to assist in the enforcement and collection of the tax levied in this section.

(8) The taxes collected hereunder shall be paid into the general fund of the county unless the board of supervisors of the county shall, in its discretion, provide that the funds shall be distributed into the different tax funds of the county or of any taxing district or districts therein which, in the board's discretion, would have received taxes from the drilling rig involved had the same been taxed ad valorem.

SOURCES: Laws, 1989, ch. 507, § 1, eff from and after July 1, 1989.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Exemption of certain drilling rigs from ad valorem taxes, see § 27-31-41.

§ 27-17-425. Annual privilege tax imposed on optometrist certified to use diagnostic pharmaceutical agents.

Upon each person licensed as an optometrist by the State Board of Optometry under the provisions of Sections 73-19-1 through 73-19-31, who also is certified to use diagnostic pharmaceutical agents under the provisions of Sections 73-19-103 through 73-19-109, there shall be levied an annual privilege tax, which shall be in addition to all other taxes imposed on optometrists .... $25.00.

SOURCES: Laws, 1994, ch. 573, § 1, eff from and after July 1, 1994.

Editor's Note — Section 73-19-31 referred to in the paragraph was repealed by Laws of 2005, ch. 404, § 12, effective July 1, 2005.

§ 27-17-450. Repealed.

Repealed by Laws, 1988, ch. 505, § 11, eff from and after July 1, 1988. [En, Laws, 1974, ch. 483]

Editor's Note — This section formerly dealt with the privilege tax on businesses not specifically mentioned in the other sections of the chapter.

GENERAL ADMINISTRATIVE PROVISIONS APPLICABLE TO CHAPTER

SEC.
27-17-451. License; where obtained.
27-17-453. License; taxpayer to make application.
27-17-455. License; issuance and duration.
27-17-457. License; issuance without examination to contractors holding local licenses; authorization to do business without separate license; no additional privilege license bond required; applicability.
27-17-459. Taxes required where taxpayer engages in several businesses.
27-17-461. Repealed.
27-17-463. License may be taken for part of year, when.
27-17-465. Tax collector to notify holder of expiration of license.
27-17-467. Penalty for failure to procure license; collection of taxes.
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27-17-483. Privilege tax exemptions; municipalities.
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27-17-489. Privilege tax exemptions; certificate.
27-17-491. Privilege tax exemptions; personal privilege; nontransferability and display of certificate; penalties.
27-17-493. Disposition of monies collected; privilege tax record to be kept.
27-17-495. County auditor to check books and records of county tax collector.
27-17-497. Compensation allowed tax collector for tax collecting damages.
27-17-499. Officer liable for taxes which he might, but fails to collect.
27-17-501. Monthly report.

§ 27-17-451. License; where obtained.

All licenses under the provisions of this chapter shall be obtained from the tax collector of the county in which the business is located if such business be located outside of a municipality, or, if the business be located within a municipality then such licenses shall be obtained from the tax collector of such municipality.

SOURCES: Codes, 1942, § 9696-206; Laws, 1944, ch. 137, § 202; Laws, 1950, ch. 535; Laws, 1962, ch. 588, § 22, eff from and after Jan. 1, 1964.

Cross References — Statewide privilege tax, see § 27-15-201.
Crime of collecting privilege tax without issuing license, see § 97-11-49.

§ 27-17-453. License; taxpayer to make application.

Every person required to obtain a license for the privilege of engaging in any business for which a privilege tax is required shall make application therefor in writing to the officer who is required to collect the tax. The application for license shall be filed on blanks to be furnished by the tax collector for that purpose, and shall be subscribed and sworn to by the person owning the business, or having an ownership interest therein; or the officer who is required to collect the tax, or his duly authorized agent, may certify to the application. If the applicant is a corporation, a duly authorized agent shall execute the application.

The application shall show the name of such person or corporation and, in case of a partnership, the name of each partner thereof; the person's, firm's or corporation's business office address; the location of the place of business to which the license shall apply; the nature of the business in which engaged; the total number of employees of the business for the previous twelve (12) months as shown by affidavit signed by the applicant; and any other information the officer who is required to collect the tax may require. The applications shall contain all the information necessary for the officer collecting the tax to properly classify the applicant and ascertain the amount of tax due. Applications for renewal of such license shall not require a certificate of notary public seal or signature, and the applicant shall not be required to obtain such signature or seal upon making the application for renewal.

The application shall be accompanied by the amount of the privilege tax as required by law.

Any person who shall willfully make any false statement in an application for a privilege license shall be guilty of a misdemeanor and, upon conviction thereof, shall be required to pay as damages double the amount of the difference between the tax paid and that which should have been paid, in addition to the fine and imprisonment imposed.

It is specifically provided that the officer taking the application for a privilege license shall carefully preserve the same for a period of three (3) years for the use of the grand jury, the courts of the state, or any duly authorized officer of the State of Mississippi; and any officer who shall refuse or fail to take or require the application or affidavit, as herein required, shall be guilty of a misdemeanor and subject to the penalties therefor.

SOURCES: Codes, 1942, § 9696-207; Laws, 1944, ch. 137, § 203; Laws, 1988, ch. 505, § 5; Laws, 1994, ch. 306, § 1, eff from and after July 1, 1994.

Cross References — Statewide privilege tax, see § 27-15-203.

Printing and requisitions for licenses, see §§ 27-17-475, 27-17-477.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

General powers conferred on state tax collector by Code 1942, § 9179, do not supersede those conferred upon local taxing powers of municipalities by "Local Privilege Tax Law of 1944," which provides in detail in Code 1942, §§ 9696-207 and 9696-208 a carefully worked out system for determination of proper privilege tax, and provides complete scheme for collection by local authorities. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

Particular, specific and special provisions of "Local Privilege Tax Law of 1944" supplant generic powers granted state tax collector by Code 1942, § 9179, because they have been expressly and exclusively conferred on municipal tax authorities in relation to matter of municipal privilege taxes. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 48, 55 et seq.

CJS. 53 C.J.S., Licenses §§ 62, 65, 66.

§ 27-17-455. License; issuance and duration.

Upon the receipt of the application herein required, and payment of the amount shown thereby to be due for the privilege to be exercised, the officer to whom said application is made shall determine if the application is in proper form, and if the correct amount be tendered, and may require the applicant to furnish such other and further information as in his opinion is necessary to ascertain the correct amount of tax due. When the correct amount of the tax has been so ascertained, the said officer shall issue to the applicant taxpayer a privilege license according to such application, and shall date the same as of the first day of the month of its issuance. The officer issuing the license shall countersign the same when issued by him, and he shall enter the same in the register prescribed by law therefor. The license issued by collectors as herein provided shall be executed in duplicate, the original shall be delivered to the licensee by the officer, and the duplicate shall be attached to the application therefor, and preserved by the officer as a public record.

If, however, such officer, shall, before issuing the said license, or at any time thereafter, have reason to believe that the statements of the business contained in the application are incorrect or false in any material particular, the said officer shall duly notify the applicant wherein the supposed discrepancy lies, and he is hereby empowered to require the applicant to render such other information as will enable him to determine the proper tax due. After making such determination of the proper tax due, if the license has not been issued, such officer shall forthwith proceed to collect the amount of tax due; and if the license shall have been issued under the original application, he shall collect the difference between the sum shown to be properly due, and the sum paid with the original application, and shall issue an additional license therefor which shall expire at the same time as the original. If the additional tax is paid within thirty (30) days after the determination by the officer of the proper amount due, no penalty shall be applied. If the taxpayer shall wilfully fail or refuse to furnish the information requested by such officer, he shall be liable for damages as in other cases of payment of an insufficient privilege tax, and may be proceeded against civilly or criminally as otherwise provided herein, and shall suffer the penalties provided herein therefor.

All licenses issued pursuant to this section shall be good, usable and valid for one (1) year after the date thereof, or for such other period as is fixed by law for the privilege, which period shall be so designated in the license. However, no such license shall be issued for a period longer than one (1) year.

SOURCES: Codes, 1942, §§ 9696-01, 9696-208; Laws, 1944, ch. 137, §§ 1, 204, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-205.

Crime of collecting privilege tax without issuing license, see § 97-11-49.

JUDICIAL DECISIONS

1. In general.

It is not necessary to proceed under this section before filing suit for the privilege taxes imposed by Code 1942, §§ 9696-134 and 9696-135. Winter v. Nash, 245 Miss. 246, 147 So. 2d 507 (1962); Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

This section has no application to a proceeding to collect a tax from one who has never sought to obtain a privilege license. Winter v. Nash, 245 Miss. 246, 147 So. 2d 507 (1962).

General powers conferred on state tax collector by Code 1942, § 9179, do not supersede those conferred upon local taxing powers of municipalities by "Local Privilege Tax Law of 1944," which provides in detail in Code 1942, §§ 9696-207 and 9696-208 a carefully worked out system for determination of proper privilege tax, and provides complete scheme for collection by local authorities. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

Particular, specific, and special provisions of "Local Privilege Tax Law of 1944" supplant generic powers granted state tax collector by Code 1942, § 9179, because they have been expressly and exclusively conferred on municipal tax authorities in relation to matter of municipal privilege taxes. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

ATTORNEY GENERAL OPINIONS

Municipality has no right to refuse to grant privilege license once applicant has complied with statutory requirements for obtaining one, and governing law does not disqualify applicant for failure to pay property taxes; municipality may not refuse to issue privilege license on grounds applicant's prior business location was sold for unpaid property taxes, where applicant complies with statutory requirements enumerated in Local Privilege Tax Law. Carey, Jan. 11, 1990, A.G. Op. #90-0017.

RESEARCH REFERENCES

ALR. Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery. 80 A.L.R.2d 1040.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 48, 55 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 23, 24.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 25.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 41-49.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 61-63.

CJS. 53 C.J.S., Licenses §§ 62, 65, 66.

§ 27-17-457. License; issuance without examination to contractors holding local licenses; authorization to do business without separate license; no additional privilege license bond required; applicability.

(1) Any contractor, including, but not limited to, any electrical, plumbing, heating and air conditioning, water and sewer, roofing or mechanical contractor, who is licensed by any one (1) municipality or county of the State of Mississippi, which municipality or county has an examining board where there is regularly given a written examination, and who does not hold a current certificate of responsibility issued by the State Board of Public Contractors, shall be allowed to do business in any other municipality or county in the state without being required to obtain a license in such other municipality or county or to undergo any further examination provided:

(a) That he furnishes evidence that he has such license;

(b) That he furnishes evidence that he actually took and passed the written examination which qualified him for such license; however, in lieu thereof evidence that if said contractor was issued a license prior to May 1, 1972, and prior to the existence of such written examination by a county or municipality which has an examining board that does presently require written examination to qualify for a license; and

(c) That he is not operating a separate place of business located in such other municipality or county.

(2) Any contractor, including, but not limited to, any electrical, plumbing, heating and air conditioning, water and sewer, roofing or mechanical contractor, who is licensed by any one (1) municipality or county of the State of Mississippi, which municipality or county has an examining board where there is regularly given a written examination, and who holds a current certificate of responsibility issued by the State Board of Public Contractors shall be allowed to do business in any other municipality or county in the state without being required to obtain a separate license in such other municipality or county or to undergo any further examination provided said contractor meets the requirements of paragraphs (a) and (b) of subsection (1) of this section.

(3) No additional privilege license bond shall be required in order for such a contractor to do business in another municipality or county in the state as long as the contractor has obtained the bond in the municipality or county where he is licensed.

(4) Nothing in this section supercedes or otherwise affects the provisions of Title 31, Chapter 3, or the provisions of Title 73, Chapter 59. In the event any provision in this section conflicts with any provision of Title 31, Chapter 3,

or of Title 73, Chapter 59, the latter titles and chapters are hereby deemed and shall be controlling over the provisions of this section.

(5) This section is intended to apply only to the Local Privilege Tax Law, and is not intended to apply to or restrict the powers and authority granted to municipalities and counties in Sections 21-19-25 and 19-5-9, or any powers or authority derived from said sections related to permits and permit bonds, and the issuance, denial or requirements thereof.

(6) No taxpayer receiving a privilege license under this section shall be authorized to advertise to the public that they are "licensed" unless said taxpayer is currently in compliance with paragraph (b) of subsection (1) of this section, or holds a current license or certificate of responsibility from the State Board of Contractors. Any officer collecting the tax may suspend the issuance or renewal of a privilege license granted under this section until such time as said officer finds that such taxpayer is in compliance with the provisions of this subsection. If any taxpayer receiving a privilege license under this section presents themselves to the public as "licensed" then said taxpayer must state to the public that they are "licensed by the city of" and/or "county of" followed by the name or names of the appropriate city and/or county from which such taxpayer is currently in compliance with paragraph (b) of subsection (1) of this section; or, if otherwise appropriate, "licensed by the State Board of Contractors."

SOURCES: Codes, 1942, § 9696-03.5; Laws, 1968, ch. 517, § 1; Laws, 1972, ch. 433, § 1; Laws, 1983, ch. 376; Laws, 2001, ch. 562, § 1, eff from and after July 1, 2001.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in (4), (5) and (6) was corrected by substituting "this section" for "Section 27-17-457."

ATTORNEY GENERAL OPINIONS

Contractor is required to hold original municipal or county license for period of at least one year in order to meet requirements of statute. Harper, March 27, 1990, A.G. Op. #90-0219.

Where an applicant seeks to transfer an electrical echanical contractor's license issued by another political subdivision, he must present proof to the governing authorities of a municipality; that he has been actively engaged in business as an electrical or mechanical contractor for at least two years, in an effort to make that factual determination, the authorities may accept as proof either a State Sales Tax Number and letters from two electrical/mechanical contractors confirming operation for two years, or proof of filing a State Sales Tax Return as a contractor for two years, although the municipality may not reject all other forms of proof arbitrarily. Hammack, June 19, 1998, A.G. Op. #98-0336.

Once a mechanical, plumbing, electrical, air conditioning and heating, water and sewer, or roofing contractor who is not licensed by the State Board of Contractors has obtained a privilege license in one municipality or county which has an examining board and written examinations, that contractor would not be required to obtain a privilege license in any other municipality or county or to take any further tests; this is conditioned upon that contractor providing documentation that (1) he or she in fact possesses a privilege license from a municipality or county, (2) he or she took and passed the required written examination, and (3) he or she does not have a separate place of business in the other municipality or county. Franklin, Oct. 5, 2001, A.G. Op. #01-0530.

If a contractor holds a current certificate of responsibility from the State Board of Public Contractors and has been granted a privilege license by any one municipality or county with a written examination, that contractor would not be required to obtain a separate privilege license or take another test in each other county or municipality in which they desire to do business; such a contractor must show that he or she does, in fact, possess a privilege license from that municipality or county, and that he or she took and passed a written examination. Franklin, Oct. 5, 2001, A.G. Op. #01-0530.

Municipalities may enact ordinances establishing examining boards and requiring the passage of written examinations prior to the issuance of privilege licenses to electrical, mechanical, plumbing, heating and air conditioning, water and sewer, and roofing contractors seeking to do business in their jurisdiction. Franklin, Oct. 5, 2001, A.G. Op. #01-0530.

This section applies only to privilege licenses. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

A county would not be able to require a contractor who has obtained a privilege license from another jurisdiction and meets the qualifications of this section to obtain a separate privilege license in the county. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

This section does not exempt contractors holding a certificate of responsibility from the State Board of Public Contractors from obtaining a privilege license in municipalities and/or counties in which they operate a place of business. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

The phrase "privilege license bond" is not defined by the Legislature. There is no other other provision of law utilizing this phrase or authorizing a "privilege license bond" be collected in addition to the fee paid for the privilege license. Chamberlin, Feb. 2, 2004, A.G. Op. 03-0583.

§ 27-17-459. Taxes required where taxpayer engages in several businesses.

Any person pursuing or engaging in more than one (1) of the businesses for which a privilege tax is imposed, shall pay separately the privilege tax imposed upon each separate business so conducted, engaged in, or pursued except as otherwise specifically provided by this chapter, and if the business made taxable, or the privilege to be exercised, is carried on at two (2) or more separate places, a separate license for each place or location of such business shall be obtained.

SOURCES: Codes, 1942, § 9696-209; Laws, 1944, ch. 137, § 205, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-207.

§ 27-17-461. Repealed.

Repealed by Laws, 1988, ch. 505, § 11, eff from and after July 1, 1988. [Codes, 1942, § 9696-210; Laws, 1944, ch. 137,§ 206]

Editor's Note — Former § 27-17-461 required a license to be taken out in a case where an additional privilege tax was required on the increase of a business.

§ 27-17-463. License may be taken for part of year, when.

Except as otherwise provided in this section, all privilege licenses issued pursuant to this chapter from and after July 1, 1988, shall expire on September 30 of each year; the privilege tax for a license which is issued for a period of less than one (1) year shall be prorated according to the length of time intervening between the date of its issuance and the following September 30.

A municipality or county may, by ordinance, determine to issue privilege licenses which shall expire one (1) year from the date of issuance.

SOURCES: Codes, 1942, § 9696-211; Laws, 1944, ch. 137, § 207; Laws, 1988, ch. 505, § 6, eff from and after July 1, 1988.

Cross References — Statewide privilege tax, see § 27-15-211.

§ 27-17-465. Tax collector to notify holder of expiration of license.

The tax collector shall mail to each privilege taxpayer holding a license, on or before the first day of the month prior to the month in which his privilege license will expire, a notice that the license will expire and that a new privilege license must be procured during the following month, and shall enclose therewith an application blank for a new license; but the failure to send or receive such notice shall not exempt such privilege taxpayer from any penalties prescribed by law.

SOURCES: Codes, 1942, § 9696-212; Laws, 1944, ch. 137, § 208; Laws, 1962, ch. 588, § 23; Laws, 1978, ch. 383, § 1; Laws, 1988, ch. 505, § 7, eff from and after July 1, 1988.

Cross References — Statewide privilege tax, see § 27-15-213.

JUDICIAL DECISIONS

1. In general.

A taxicab operator could not recover privilege tax license payments which he paid for five years although the tax ordinance was void, because his payments were voluntary, where he paid the tax without protest upon receipt of tax collector's notice that tax must be paid to escape penalty of 100 per cent and also where there was no evidence of other collection efforts except the warning by city marshal who had no authority to enforce the tax payments. City of Grenada v. Andrews, 214 Miss. 105, 58 So. 2d 382 (1952).

§ 27-17-467. Penalty for failure to procure license; collection of taxes.

If any person liable for a tax under the provisions of this chapter shall fail, refuse or neglect to obtain the necessary license and pay such tax prior to commencing in business, or if any person liable for such tax shall fail, refuse or neglect to obtain a new or renewal license and pay the required tax as provided under the terms of this chapter, then such person shall be liable for the amount of such tax plus an initial penalty of ten percent (10%), and thereafter a penalty of one percent (1%) per month for each month or part thereof during which the tax remains delinquent. It is hereby made the duty of the tax collectors of the various counties and of the tax collectors of all municipalities to collect all privilege taxes levied and imposed under the provisions hereof. In all cases where any privilege taxes remain delinquent and unpaid for a period of thirty (30) days or more, the tax collector shall have the authority and the power to proceed to collect such tax from any person liable therefor and, for the purpose of making such collection, shall have full and complete power and authority to make any and all assessments that might be required or necessary under the provisions hereof, to bring any suits or actions in any court of competent jurisdiction, and to do any and all other things which might be necessary for such purpose.

SOURCES: Codes, 1942, § 9696-206; Laws, 1944, ch. 137, § 202; Laws, 1950, ch. 535; Laws, 1962, ch. 588, § 22; Laws, 1978, ch. 383, § 2; Laws, 1988, ch. 505, § 8; Laws, 1993, ch. 325, § 1, eff from and after July 1, 1993.

Cross References — Statewide privilege tax, see § 27-15-215.

Action to collect tax, penalty and interest, see § 27-35-5.

JUDICIAL DECISIONS

1. In general.

Statutory provisions for damages and for interest prior to judgment under the municipal privilege tax act should be strictly construed. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

ATTORNEY GENERAL OPINIONS

A penalty of 10 percent is imposed the next day after the expiration of a privilege license, an additional one percent is imposed once the privilege tax is delinquent for 1 month, and an additional 1 percent is imposed for each month thereafter that the tax remains delinquent. Mullins, Sept. 27, 2001, A.G. Op. #01-0580.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 75.

16 Am. Jur. Pl & Pr Forms (Rev), Form 73.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 71.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 11-15.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 382.

CJS. 53 C.J.S., Licenses § 77 et seq.

§ 27-17-468. Collection of privilege taxes due in former years; limitation.

When the tax collector of any county or municipality shall discover anyone who has failed to pay privilege taxes due in any former year or years he shall make the proper collection for such year or years. The power to collect these past due taxes shall expire at the end of seven (7) years from the date when the right so to do first accrued.

SOURCES: Laws, 1985, ch. 425, § 10, eff from and after passage (approved March 26, 1985).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 712-733.
CJS. 85 C.J.S., Taxation §§ 1248.

§ 27-17-469. Post license in conspicuous place, or exhibit same.

Each privilege license issued shall be kept posted in a conspicuous part of the place of business of the person to whom such license has been issued where the business carried on has a permanent location, and if the business is such that the license cannot be so posted, then the licensee shall have such license in his actual possession at the time of carrying on such business or doing the act named. In the case of slot or vending machines, the license shall be attached conspicuously and securely to the machine, or device. Any officer of the law shall have the right to demand that any transient person exhibit the license to him, and failure of the person to so exhibit his license, or the absence of a license from a slot or vending machine, shall be prima facie evidence that the privilege license required has not been procured. In all cases where the question arises as to whether a privilege license has been procured, the license or record thereof, if in existence, shall be the only evidence of payment. Where a proper holder of a privilege license to engage in any business at any definite location in a county or municipality desires to remove same to another location in the same county or municipality, the tax collector shall upon proper application in writing by the licensee, grant to such person the right to make such move, and shall endorse upon the said license his approval of the change in location.

SOURCES: Codes, 1942, § 9696-213; Laws, 1944, ch. 137, § 209, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-217.

§ 27-17-471. License to be a personal privilege.

The privilege license herein provided shall be and constitute a personal privilege to the person named therein to conduct the business specified in the license, and shall not be transferable to any other person, and shall be construed to limit to the county or municipality and location specified therein, the person named in the license in conducting the business and exercising the privilege named, unless otherwise provided by this chapter, and such license shall not exempt from taxation any property used in the business except as specifically provided by law.

No change in the name of the firm, nor the taking in of a new partner, nor the withdrawal of one or more members of the firm shall be considered as commencing business, but if any one or more of the partners remain in the firm, the business shall be regarded as continuing.

SOURCES: Codes, 1942, § 9696-214; Laws, 1944, ch. 137, § 210, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-219.

JUDICIAL DECISIONS

1. In general.

This provision does not operate to invalidate an agreement for the purchase of a business whereby the purchaser operated for a period under the seller's privilege tax license, pending the obtaining of one in his own right. Rast v. Sorrell, 240 Miss. 333, 127 So. 2d 435 (1961).

Where a corporation pays an annual privilege tax to a city on account of operation of an ice cream factory in that city and as a result acquires the privilege of selling its manufactured goods at wholesale from refrigerated trucks, the corporation is not exempt from paying the transient vendor or dealer's tax to the state for selling its goods in other counties outside of that city. Stone v. Seale-Lily Ice Cream Co., 52 So. 2d 486 (Miss. 1951).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 65.

§ 27-17-473. Unlawful business not legalized.

The issuance of a privilege license, or the payment of a tax required therefor, shall not make lawful any business, employment, transaction, article or device, or the operation thereof, contrary to any statute of this state, or any ordinance of any municipality thereof.

SOURCES: Codes, 1942, § 9696-215; Laws, 1944, ch. 137, § 211, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-221.

JUDICIAL DECISIONS

1. In general.

This section does not affect the lawfulness of the business of selling fireworks, which is not prohibited by any state law and is subject to privilege tax under Code 1942, § 9696-77 (Supplement to Code of 1942), so as to render valid a municipal ordinance prohibiting the sale, possession, or control of fireworks. King v. City of Louisville, 207 Miss. 612, 42 So. 2d 813 (1949).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 10.

CJS. 53 C.J.S., Licenses § 53.

§ 27-17-475. County auditor to have licenses printed.

It shall be the duty of the county auditor or of the governing body of a municipality to prepare and have printed and distributed to the officer collecting the tax the proper privilege tax license blanks necessary to carry into effect any law relating to privilege taxes, and there shall be printed on each license at the bottom thereof the words "this license shall not make lawful any act or thing declared to be unlawful by the State of Mississippi." All such privilege license blanks shall be printed in the form prescribed by the county auditor or in the case of a municipality by the governing body of a municipality and shall be imprinted with the fiscal year for which the blanks are to be issued and shall be numbered consecutively beginning with number one (1) of each fiscal year and shall be made in duplicate, the original and duplicate to bear the same serial number and be alike in all respects except that they be marked "original" and "duplicate" and shall be of different colors.

SOURCES: Codes, 1942, § 9696-221; Laws, 1944, ch. 137, § 217, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-223.

§ 27-17-477. Requisitions for licenses.

Each officer required to collect privilege taxes shall make requisitions upon the county auditor or in the case of municipalities upon the governing body of the municipality for such license blanks for privilege taxes as will be needed by him from time to time and the county auditor or the proper officer of the municipality shall make a record by serial number of the license blanks issued to such officer, which shall be accounted for as herein provided.

SOURCES: Codes, 1942, § 9696-222; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 218, eff from and after June 1, 1944.

§ 27-17-479. Privilege tax exemptions; elderly or persons with disabilities and hotel enterprises.

(1) Any person sixty-five (65) years old or older, or any person blind, deaf or dumb, or maimed by loss of hand or foot, or loss of the use of the hand or foot, or any citizen of the United States who is disabled or suffering from an infirmity to the extent that he is unable to perform physical labor of not more than fifty percent (50%) of normal ability, and whose annual gross income is not more than Nine Hundred Dollars ($900.00), may exercise any of the privileges named below in this subsection, without the payment of a privilege

tax under the provisions of this chapter, which exemption shall be restricted and limited to the following business:

Broom factories, checking rooms, drays, fur dealers, ice cream carts, mattress renovators, sign painters, shoe repair shops, insurance agents.

(2) Any person claiming an exemption under this section shall apply for and obtain a certificate of exemption as provided in Sections 27-17-489 and 27-17-491.

SOURCES: Codes, 1942, § 9696-217; Laws, 1944, ch. 137, § 213; Laws, 1988, ch. 505, § 9, eff from and after July 1, 1988.

Cross References — Insurance taxes, see § 27-15-81 et seq.
Statewide privilege tax, see § 27-15-227.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-17-481. Repealed.

Repealed by Laws, 1988, ch. 505, § 12, eff from and after July 1, 1988. [Codes, 1942, § 9696-217; Laws, 1944, ch. 137, § 213]

Editor's Note — Former § 27-17-481 provided for a privilege tax exemption for national and state banks.

§ 27-17-483. Privilege tax exemptions; municipalities.

No tax levied under the provisions of this chapter shall be levied, assessed or collected from or against any municipality in this state which operates any business which is taxed hereunder, it being the intention of the legislature that all municipalities are specifically exempted from taxation under this chapter and it shall never be construed as being the intention of the legislature to levy any privilege tax against any municipality in the state.

SOURCES: Codes, 1942, § 9696-217; Laws, 1944, ch. 137, § 213, eff from and after June 1, 1944.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the section text was corrected by substituting "this chapter" for "this act."

Cross References — Statewide privilege tax, see § 27-15-231.

§ 27-17-485. Privilege tax exemptions; clubs for promotion of home arts, etc., and persons pursuing certain trades and callings.

Clubs for the promotion or development of the art of canning, preserving or bottling; the art of cooking; art of sewing or handiwork; the art of drawing or painting; or otherwise, the art of home or domestic science may sell their products without paying any of the taxes levied by this chapter, but this shall not be construed to authorize any person, persons, club or clubs to promote such business as a commercial enterprise or to sell things not produced by themselves.

Any natural person who, as an individual, pursues any trade or calling involving only physical labor or skill, including but not limited to farming and pulpwood cutting, and who only receives compensation for his personal physical efforts or manual labor, and does not sell or supply materials for which a specific charge is made, may do so without being required to pay a privilege tax imposed in any of the respective sections of this chapter.

SOURCES: Codes, 1942, § 9696-216; Laws, 1944, ch. 137, § 212; Laws, 1988, ch. 505, § 10, eff from and after July 1, 1988.

Cross References — Statewide privilege tax, see § 27-15-225.
Exemptions of cooperative associations, see § 79-19-53.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.
CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-17-487. Privilege tax exemptions; activities in fair enclosures.

No privilege tax license shall be required of hotels, restaurants, fruit stands and vendors of soft drinks, circuses, exhibitions, street fairs, or other amusements when the same are held within the enclosure of and in cooperation with the annual holding of any state, county or community fair or any fair held for the benefit of the public where no dividends are declared to the stockholders thereof, and the proceeds thereof are used exclusively for the operation, maintenance and improvement of such fair.

SOURCES: Codes, 1942, § 9696-220; Laws, 1944, ch. 137, § 216, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-233.

JUDICIAL DECISIONS

1. In general.

The fact that a state fair corporation, which owned various mechanical rides, devices and shows and was engaged in the business of operating these at fairs and carnivals for profit, conducted an annual fair in Mississippi which might make worthy and beneficial contributions to the community, did not make it a "community fair" under the statutory exemption from municipal privilege taxes, where the proceeds derived from fair activities were not used exclusively for the operation, improvement and maintenance of the fair. Myers v. Mississippi-Alabama State Fair, 257 So. 2d 233 (Miss. 1971).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-17-489. Privilege tax exemptions; certificate.

Any person desiring to avail himself of any of the exemptions provided in Sections 27-17-479 through 27-17-485, shall, before engaging in such business, file with the officer whose duty it is to collect the privilege tax, an application for the exemption certificate accompanied by an affidavit stating fully the grounds upon which such exemption is claimed. If the exemption be claimed on grounds other than a manifest visible disability, the above required affidavit must be accompanied by a certified statement from a county health officer, or the United States Veterans Bureau in the case of veterans of the World War, showing that the applicant is disabled to the extent of fifty percent (50%) as defined in Section 27-17-479. If fully satisfied of the facts and of the justice of such claim, the officer shall issue to such applicant a certificate of exemption which shall authorize such person to engage in the business therein designated for a period of one (1) year. The procedure above set forth shall be required in every instance for the continuance of such business during each and every year subsequent to that for which the exemption certificate was originally granted. Provided, that the tax collector before issuing any additional certificate shall require the applicant to show to his satisfaction that the gross income of the applicant for the preceding year was not more than nine hundred dollars.

SOURCES: Codes, 1942, § 9696-218; Laws, 1944, ch. 137, § 214, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-235.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 32 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Form 73.

CJS. 53 C.J.S., Licenses §§ 56, 57.

§ 27-17-491. Privilege tax exemptions; personal privilege; nontransferability and display of certificate; penalties.

The certificate of exemption provided for above is hereby declared to be a personal privilege, peculiar to the grantee and is not transferable, and no business may be conducted thereunder by any person other than the grantee.

The holder of any such certificate of exemption is hereby required to keep and display the same as in the case of the holder of a privilege license. Any person who shall engage in any business as an exempt person, without first complying with the requirements above set forth, shall be liable to prosecution and punishment as is provided for persons doing business without a license, and in addition thereto, shall be liable for any and all privilege taxes and damages, provided for in the case of non-exempt persons failing to obtain privilege licenses; and any person who shall make a false representation, or affidavit, in order to secure such exemption shall be punishable as in the case of perjury.

SOURCES: Codes, 1942, § 9696-219; Laws, 1944, ch. 137, § 215, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-237.

§ 27-17-493. Disposition of monies collected; privilege tax record to be kept.

Each officer authorized to issue privilege licenses shall keep a privilege tax register in such form as he shall determine, in which the names of all privilege taxpayers shall be recorded, showing the amount paid, the serial number of the license issued and the period covered by such license, the business licensed and the location thereof. This register shall be submitted to the county auditor, or in the case of a municipality to the governing body of the municipality by such officer at the end of each fiscal year or within twenty (20) days thereafter, when his final settlement shall be made. If the same be found correct and the amounts shown thereon to have been paid into the proper treasury, the county auditor or the proper officer of the municipality shall endorse the register "examined and found correct." This register shall constitute a permanent record of the officer authorized to collect privilege taxes and shall always be open for inspection by the public and the same shall be submitted to the grand jury by the keeper thereof whenever called for. At the same time when final settlement is made, as provided in this section, every officer shall return to the county auditor or to the governing body of the municipality in the case of municipalities all unused privilege tax license blanks and shall make a final settlement of his privilege tax accounts. The unused privilege tax license blanks shall be kept by the proper officer for three (3) years, at the expiration of which they may be destroyed. On or before the 20th day of January of the year in which the officer's term expires, each officer shall in like manner submit to the county auditor or in the case of municipalities to the governing body of the municipality his privilege tax register, together with itemized receipt signed by his successor in office properly certified by the county auditor or by the proper officer of the governing body of the municipality, setting forth by serial number all unused privilege tax license blanks on hand at the expiration of his term of office, and if the county auditor or the proper officer of the municipality shall find the same correct, he shall endorse the same, as hereinbefore provided, and shall charge such officer's successor in office with all unused privilege tax license blanks, which shall be accounted for by said successor in office in like manner. Any other officer shall make a like settlement upon the expiration of his term of office. All monies received by the officer authorized by law to issue privilege tax licenses shall be deposited in the proper depository and shall be accounted for as provided by law.

SOURCES: Codes, 1942, § 9696-223; Laws, 1944, ch. 137, § 219, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-239.
Monthly report of collections, see § 27-17-501.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 107.

§ 27-17-495. County auditor to check books and records of county tax collector.

At the end of each month the county auditor shall carefully check the books and records of the tax collector and his accounts with any bank or banks, and shall verify the amounts collected as privilege taxes under the provisions of this chapter.

SOURCES: Codes, 1942, § 9696-224; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 220; Laws, 1968, ch. 361, § 32, eff from and after January 1, 1972.

§ 27-17-497. Compensation allowed tax collector for tax collecting damages.

On all privilege taxes not paid during the month when due and on which a penalty is collected, the tax collector making such collection shall be entitled to retain one-fourth (¼) of said damages, to be deposited in the county general fund, in addition to the regular commission now allowed by law on regular collections. But if a collection is made of any delinquent tax and damages assessed and levied by this chapter at the instance of any constable of this state, and of any police officer of any municipality, the said tax collector shall retain for the county general fund only ten percent (10%) of said damages in addition to the regular commissions allowed by law on regular collections, and the peace officer shall receive as compensation for this service fifteen percent (15%) of said damages, and the officer collecting the tax is hereby directed to pay to the constable or police officer the commission allowed by this section for the collection of the delinquent tax and damages at the time of the collection of said tax and damages.

It is hereby made the duty of every constable and of every police officer of any municipality in this state to assist any officer whose duty it is to collect the taxes assessed and levied by this chapter.

SOURCES: Codes, 1942, § 9696-225; Laws, 1940, ch. 120; Laws, 1942, ch. 118; Laws, 1944, ch. 137, § 221; Laws, 1968, ch. 361, § 61, eff from and after January 1, 1972.

§ 27-17-499. Officer liable for taxes which he might, but fails to collect.

It shall be the duty of the officer required to collect privilege taxes to require all persons liable for a privilege tax to pay the same, and he shall cause all persons doing business without a privilege license as required under this chapter, to be prosecuted. He is further required to make demands in writing for payment of the tax due, plus an initial penalty of ten percent (10%), and thereafter a penalty of one percent (1%) per month for each month or part thereof during which the tax remains delinquent. If payment is not made upon demand, he shall forthwith bring suit in his official character against all such persons legally liable for privilege taxes; and such suits shall be prosecuted to final judgment and execution thereon if the judgment be in favor of the officer. No officer required to collect this tax shall be liable for any costs in such suits.

The officer required to collect privilege taxes shall be liable for the amount of the tax, together with a penalty calculated in the same manner as the penalty for delinquent privilege taxes, that he fails to collect; and the liability of such officer shall extend to all cases where he might collect such taxes but negligently fails to do so.

It is further provided that for willful failure to carry out any of the provisions of this chapter, the officer whose duty it is to collect privilege taxes shall be liable to the state on his official bond for a penalty of One Hundred Dollars ($100.00) for each such failure, and it shall be the duty of the Attorney General to bring suit for such penalty.

SOURCES: Codes, 1942, § 9696-226; Laws, 1940, ch. 120; Laws, 1944, ch. 137, § 222; Laws, 1990, ch. 338, § 1, eff from and after July 1, 1990.

Cross References — Tax suits by Attorney General, see § 7-5-55.
Executions, generally, see § 13-3-111 et seq.
Action to collect tax, penalty and interest, see § 27-35-5.

JUDICIAL DECISIONS

1. In general.

"Officer," to whom reference is made in this section, is the "officer collecting the tax" defined by Code 1942, § 9696-01 to be "the person who collects the taxes for the municipality," and municipal tax collector has exclusive power to sue for past due privilege taxes. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

RESEARCH REFERENCES

Am Jur. 16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Forms 71, 72.

16 Am. Jur. Pl & Pr Forms (Rev), Licenses and Permits, Form 73.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 382.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 388.

§ 27-17-501. Monthly report.

The privilege taxes paid to the officer collecting same shall be reported by him monthly and paid into the proper depository, to the credit of the general fund, as are other taxes, except as otherwise provided by law, and each officer shall within twenty (20) days after the end of each month make to the county auditor, or in the case of a municipality, to the governing body of the municipality, a report of the licenses issued by him during the preceding month, upon such form as shall be prescribed by the county auditor or by the governing body of the municipality.

SOURCES: Codes, 1942, § 9696-227; Laws, 1944, ch. 137, § 223; Laws, 1978, ch. 383, § 3, eff from and after passage (approved March 15, 1978).

Cross References — Statewide privilege tax, see § 27-15-241.

Disposition of monies collected, see § 27-17-493.

PENALTIES

Sec.
27-17-521. Penalties.

§ 27-17-521. Penalties.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and on conviction thereof shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in the county jail not exceeding six (6) months, or by both such fine and imprisonment in the discretion of the court within the limitation aforesaid; and such fine and imprisonment shall be in addition to any other penalty imposed by any particular section of this chapter. The courts of the county in which the offender resides, or if a company, in which it carries on business, shall have jurisdiction to enforce this section. Any persons failing to pay the privilege taxes imposed by this chapter, and to obtain a license as hereby required, but pursuing the business for which a privilege tax is imposed without procuring such license, may be proceeded against by suit, in addition to being dealt with criminally; and the officer required to collect the tax may seize and sell any property of such person liable for such tax and penalty, in the same manner as he may distrain and sell property of other taxpayers delinquent for the payment of ad valorem taxes due on personal property.

SOURCES: Codes, 1942, § 9696-228; Laws, 1944, ch. 137, § 224, eff from and after June 1, 1944.

Cross References — Statewide privilege tax, see § 27-15-251.

Action to recover tax, penalty and interest, see § 27-35-5.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

This provision does not operate to invalidate an agreement for the purchase of a business whereby the purchaser operated for a period under the seller's privilege tax license, pending the obtaining of one in his own right. Rast v. Sorrell, 240 Miss. 333, 127 So. 2d 435 (1961).

Interest on amount of taxes and damages due because of the value to pay municipal privilege tax would run on the judgment against the taxpayer only from the date of judgment. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

RESEARCH REFERENCES

ALR. Debts arising from tax penalties as exceptions to bankruptcy discharge under § 523(a)(7)(A) and (B) of Bankruptcy Code of 1978 (11 U.S.C.S. § 523(a)(7)(A) and (B)). 157 A.L.R. Fed. 313.

Am Jur. 51 Am. Jur. 2d, Licenses and Permits § 75.

CJS. 53 C.J.S., Licenses § 121 et seq.

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